

Stroud's Judicial Dictionary of Words and Phrases

Volume 3: P-Z

Ninth Edition

Daniel Greenberg

Editor

Barrister of Lincoln's Inn; Counsel for Domestic Legislation, House of Commons; General Editor, Annotated Statutes and Insight Encyclopaedia, Westlaw UK

Yisroel Greenberg

Assistant Editor

Barrister of Lincoln's Inn

University of Nottingham
Hallward Library

SWEET & MAXWELL



THOMSON REUTERS

1007738521

Published in 2016 by Thomson Reuters (Professional) UK Limited trading as Sweet & Maxwell, Friars House, 160 Blackfriars Road, London, SE1 8EZ (Registered in England & Wales, Company No 1679046.

Registered Office and address for service: 2nd floor, 1 Mark Square, Leonard Street, London EC2A 4EG)

For further information on our products and services, visit www.sweetandmaxwell.co.uk

Typeset by Letterpart Limited, Caterham on the Hill, Surrey, CR3 5XL.

Printed and bound in Great Britain by CPI Group (UK) Ltd, Croydon, CR0 4YY.

No natural forests were destroyed to make this product; only farmed timber was used and re-planted.

A CIP catalogue record of this book is available for the British Library.

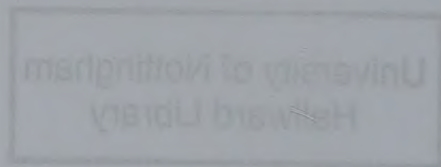
ISBN: 978-0-414-05722-7

Thomson Reuters and the Thomson Reuters logo are trademarks of Thomson Reuters.

Sweet & Maxwell ® is a registered trademark of Thomson Reuters (Professional) UK Limited.

Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland.

All rights reserved. No part of this publication may be reproduced, or transmitted in any form, or by any means, or stored in any retrieval system of any nature, without prior written permission, except for permitted fair dealing under the Copyright, Designs and Patents Act 1988, or in accordance with the terms of a licence issued by the Copyright Licensing Agency in respect of photocopying and/or reprographic reproduction. Application for permission for other use of copyright material, including permission to reproduce extracts in other published works should be made to the publishers. Full acknowledgement of the author, publisher and source must be given.



P

P. See PER PRODUCTION.

PPI. "PPI" policy: see HONOUR.

PACIFIC. In a SLIP, "the Pacific" does not mean all ports on the west coast of North, Central, or South America; what it means in any particular case depends on the circumstances and course of dealing (*Royal Exchange Assurance v Tod*, 8 T.L.R. 669, where it meant all the ports on the west coast of South America).

PACK. "Pack of cards": see CARDS.

"Packing-up" goods: see POLISH.

See PRE-PACKED.

PACK OF HOUNDS. See *Burton v Atkinson*, 24 T.L.R. 498.

PACKAGE. Food and Drugs, etc. Act 1928 (c.31) s.6, which regulated a "package", "is irrespective of sale, or exposure for sale, and contemplates wholesale dealing or disposition of the entire package" (per Gibson J., *Maguire v Porter* [1905] 2 I.R. 151, cited also PARCEL); but tubs of margarine, open at the top and from which customers were served, were such "packages" (*McNair v Horan*, 91 L.T. 555). See hereon BRAND.

There have been a number of cases in recent years in which there has been argument as to the meaning of the word "package" where bills of lading have incorporated clauses, from the Hague Rules or from national Acts governing the carriage of goods by sea, limiting liability for loss or damage to a maximum sum in respect of each "package". In general, in the absence of any evidence of contrary intention, containers, rather than the individual parcels or cartons making up their contents, have been held to be packages (*The Alex* [1974] 1 Lloyd's Rep. 106; *The Kulmerland* [1973] 2 Lloyd's Rep. 428; *The Bischofstein* [1974] 1 Lloyd's Rep. 122; *The Container Forwarder* [1974] 1 Lloyd's Rep. 119). But where cartons of shoes were packed into containers it was held that the cartons rather than the containers were the packages because that seemed to be the intention of the parties (*The Tindefell* [1973] 2 Lloyd's Rep. 253). Similarly, and for the same reason, where cartons of tins of ham were packed into a container, the cartons were the "packages" (*The American Legion* [1975] 1 Lloyd's Rep. 295), and, in a later case, it has been held that "package" must be given its ordinary meaning, and where cartons of electrical video and audio equipment were carried in containers, it was the cartons which were the "packages" (*The Aegis Spirit* [1977] 1 Lloyd's Rep. 93). An electrical transformer on wooden skids was not a "package" (*The Pacific Bear* [1974] 1 Lloyd's Rep. 359), nor was a yacht described as "unpacked" (*The Prinses Margriet* [1974] 1 Lloyd's Rep. 599). Tanks of latex were not "packages" (*The Pioneer Moon* [1975] 1 Lloyd's Rep. 199). Bundles of ingots of tin were "packages" (*The Fernland* [1975] 1 Lloyd's Rep. 461). Cartons of sewing machine heads were "packages" rather than the pallets to which they were strapped (*The Aleksander Serafimovich* [1975] 2 Lloyd's Rep. 346).

PACKAGING

Where parcels of cargo were loaded in containers, it was the parcels and not the containers which constituted the relevant “packages” (*The River Gurara* [1997] 4 All E.R. 498).

Stat. Def., Weights and Measures Act 1985 (c.72) s.68.

Stat. Def., Medicines Act 1968 (c.67) s.133; Weights and Measures Act 1979 (c.45) s.14.

See PARCEL.

PACKAGING. “. . . the plastic carrier bags handed to customers in shops, whether free of charge or not, constitute packaging within the meaning of [Directive 94/62]” (*Plato Plastik v Caropack* [2004] 3 C.M.L.R. 661, ECJ, para.59).

PACKINGS. In the Annex to EEC Council reg.950/68 as amended by reg.333/83, “packings” included beer barrels, beer bottles and plastic crates for beer barrels, and this was held to apply even where those containers were to be returned to the seller of the beer in a non-EEC country (*Firma Albert Schmid v Hauptzollamt Stuttgart-West* (No.357/87) [1990] 1 C.M.L.R. 605).

PACKER. “This is a term well understood in London, and means a person employed by merchants to receive, and (in some instances) to select, goods for them from manufacturers, dyers, calenderers, etc. and pack the same for exportation” (Arch. Bank., (11th edn), 37).

PACKET. See LETTER; PACKAGE; PARCEL.

PACTIONAL. Pactional damage is the amount which, by their pact or agreement, the parties have agreed to as the compensation to be paid for the breach of the agreement between them—otherwise called liquidated damages; “pactional damage”, as used by Halsbury C.: see *Clydebank Co v Yzquierdo y Castaneda* [1905] A.C. 6, cited LIQUIDATED DAMAGES.

PAEDOPHILE MANUAL. Stat. Def. (implicit), Serious Crime Act 2015 s.69.

PAID. “Paid”, like “payment”, is generally satisfied by something being given or done which is money’s worth, e.g. of the payment of a legacy as in *Coombe v Trist* (1 My. & C. 69), and *Att-Gen v Loscombe* (29 L.J. Ex. 305); or of an “estate” for which at least 30 shall be “bona fide paid” so as to obtain a pauper settlement (Poor Relief Act 1722 (c.7) s.5) (*R. v Belford*, 32 L.J.M.C. 156).

But payment by settlement of account was not the kind of payment contemplated by Income Tax Act 1853 (c.34) s.53; life insurance premiums deductible from income tax under that section had to be “paid” in the ordinary sense of that word, i.e. in cash; an allowance by an insurance company that part of a premium was to remain on credit on which the insurer was to pay interest, was not “paid” by the insurer, within the section, although as between him and the company it might be equivalent to payment (*Hunter v Att-Gen* [1904] A.C. 161).

Duties or other sums “really and bona fide paid and borne by the party to be charged” (Income Tax Act 1842 (c.35) Sch.E r.1); see *Hudson v Gribble*, 72 L.J.K.B. 247, cited DUTIES.

“Paid” (Prices and Incomes Act 1966 (c.33) ss.28(2), 29(4)) held to mean contracted to be paid as opposed to actually paid before the dates when the Act came into operation (*Allen v Thorn Electrical Industries* [1968] 1 Q.B. 487).

“Price paid” (Land Registration Rules 1925 (No.1093) r.247(1)) means the price which is payable and not the money which has actually been received by the transferor (*London and Cheshire Insurance Co v Laplagrene Property Co* [1971] 1 Ch. 499).

A cheque is only payment if duly honoured; therefore, allotment money on shares was not “paid to and received by the company” within Companies Act 1900 (c.48) s.4(1) by a cheque not paid on presentation, though afterwards made good (*Mears v Western Canada Pulp Co* [1905] 2 Ch. 353, discussing and distinguishing *Glasgow Pavilion v Motherwell*, 41 S.L.R. 73); cheques should be cleared before the allotment is made (*Mears*). See also *Re National Motor Mail Coach Co No.2* [1908] 2 Ch. 228, cited VOIDABLE, as to the remedy where s.4 had been disregarded and allotment had proceeded. See also *Burton v Bevan* [1908] 2 Ch. 240; *Re Orleans Motor Co* [1911] 2 Ch. 41, cited FLOATING SECURITY.

Interest on an overdraft added to the principal half-yearly in accordance with the usual practice of bankers was not “paid” to the bank within s.36(1) of the Income Tax Act 1918 (c.40), unless something was paid in to the account during the relevant period (*Paton v Inland Revenue Commissioners* [1938] A.C. 341, overruling to this extent *Inland Revenue Commissioners v Holder* [1931] 2 K.B. 81).

“Paid to the settlor by way of loan” (Finance Act 1938 (c.46) s.40(5)(a)): see *Potts’ Executors v Inland Revenue Commissioners* [1951] A.C. 443 (money paid out by company on behalf of a settlor who was the sole governing director).

A testamentary direction that all legacies are to be “paid” free of legacy duty will be read as including the idea of satisfaction, transfer, or delivery, so that chattels, stock, or shares, the subject of a specific legacy, will, like payment of a pecuniary legacy, have to be delivered or transferred free of duty to the legatee (*Ansley v Cotton*, 16 L.J. Ch. 55; *Re Johnston, Cockerell v Essex*, 26 Ch. D. 538).

A testamentary direction that debts are to be “paid” (whether legacies are also mentioned or not) prevents the presumption that a legacy to a creditor is in satisfaction of his claim (*Re Huish, Bradshaw v Huish*, 43 Ch. D. 260; disapproving *Edmunds v Low*, 26 L.J. Ch. 432).

Articles of a company which empower the declaration of dividends “to be paid” to members, do not authorise the issue of bonds for dividends (*Wood v Odessa Water Works Co*, 42 Ch. D. 636; *Hoole v Great Western Railway*, 3 Ch. 262).

A bill of sale “truly sets forth its consideration” (Bills of Sale Act (1878) Amendment Act 1882 (c.43) s.8) if the money therein stated to be “paid” did not actually pass in cash, but was a sum owing by the grantor to the grantee for unpaid purchase-money of the chattels therein comprised (*Ex p. Bolland*, 21 Ch. D. 543). See TRULY SET FORTH; NOW.

In a charter-party agreeing to pay the highest sum proved to have been paid, “paid” should be read as meaning “contracted to be paid” (*Gether v Capper*, 15 C.B. 701; see also PROVE).

So, in a re-insurance policy, “to pay as may be paid thereon” does not imply an actual payment by the re-insurer as a condition precedent, but means that payment under such re-insurance is to be regulated by that to be made on the original policy (*Re Eddystone Insurance* [1892] 2 Ch. 423, cited PAY).

“The proposer or his paid driver” in a third party policy of insurance meant that the driver was paid and driving for the proposer and not that the proposer paid him (*Bryan v Forrow* [1950] 1 All E.R. 294).

Stamp on security for money to be “lent, advanced, or paid” (Stamp Act 1815 (c.184) Sch.): see *Wroughton v Turtle*, 13 L.J. Ex. 57.

Section 338 of the Income and Corporation Taxes Act 1988 allows a company to deduct yearly interest “paid” by the company in an accounting period from its profits

PAID

for the period for the purposes of determining liability to corporation tax. Company A lent money to a subsidiary Company B for the purpose of paying arrears of interest on a loan from A to B, so that the payments could be deducted from profits by a purchaser. The Revenue argued that the arrears of interest were not really “paid” since the only purpose of the series of circular transactions was to produce an allowable deduction for corporation tax. The House of Lords held that money was paid by B to A despite being paid out of money lent by A to B for that purpose. The *Ramsay* principle (*WT Ramsay Ltd v IRC* [1981] 1 All E.R. 865), which required courts in fiscal matters to take an overall view of the facts and not to be constrained by the apparent nature of individual parts of a pre-planned series of transactions, did not prevent “paid” from being given its ordinary legal meaning here (*Westmoreland Investments v MacNiven* [2001] 1 All E.R. 865, HL).

“Money paid” (Gaming Act 1892 (c.9) s.1) (see GAMING CONTRACT) did not apply to a revocable deposit (*O’Sullivan v Thomas* [1895] 1 Q.B. 698; *Burge v Ashley* [1900] 1 Q.B. 744; *Levy v Warburton*, 70 L.J.K.B. 708, cited GAMING CONTRACT). See IN RESPECT OF.

“Paid in full”: see *Re Keet* [1905] 2 K.B. 666.

Compensation “paid under the Act”: see *Thompson v North Eastern Marine Engineering Co* [1903] 1 K.B. 428, cited UNDER.

For the meaning of the phrase “to be paid in full by the K Coal Co” in a charterparty, see *Kimber Coal Co Ltd v Stone & Rolfe Ltd*, 95 L.J.K.B. 601.

“Commission paid by the client”: see BY.

“Unless he shall have paid all such rates”: see UNLESS.

“Valuable consideration actually paid”: see VALUABLE; TENDER; PUNCTUAL.

“Paid his fare”: see FARE.

“Paid by the intestate”: see ADVANCEMENT.

See PAY; PAYABLE; PAYMENT; DULY PAID; I WILL SEE YOU PAID; RECEIPT; TO BE PAID; PUNCTUAL; TENDER.

PAID; PAYABLE. “As Lord Mustill pointed out in *Charter Reinsurance Co Ltd v Fagan* [1997] AC 313 at 384, the word ‘paid’ can be slippery. In the same case Lord Hoffmann demonstrated graphically the different uses to which the words ‘pay’ or ‘paid’ can be put: see page 391. Lord Hoffmann also emphasised that the meaning of a word will often depend on its context and, in some cases, the notion of a word having a ‘natural’ meaning is not very helpful. In paragraph [5] ‘will be paid to you’ can and probably does mean, in relation to the cash bonuses, that the relevant sum is to be credited to Mr Hopkin’s bank account when it becomes ‘payable’ in accordance with paragraph [4]. But ‘will be paid to you’ cannot mean the same in relation to the Performance Shares, because there could be no payment of shares or cash until the end of the performance cycles. So Mr Leiper has to say that ‘will be paid to you’ in paragraph [5] means, in relation to the Performance Shares ‘will be vested in you there and then’, subject only to the conditions that follow. But there can be no warrant for that meaning, given the terms of paragraph [4], which specifically stipulates that the Performance Shares will vest over two sequential three-year performance cycles, in conformity with the pro-forma Awards and the terms of the EPP.” (*Hopkin v Financial Security Assurance (UK) Ltd* [2011] EWCA Civ 243.)

See NET RENT PAYABLE.

PAID ANNUAL LEAVE. For a discussion of the implications of a requirement for paid annual leave, see *Robinson-Steele v RD Retail Services Ltd* (C-131/04) ECJ.

PAID BY THE EMPLOYER. For the purposes of the National Minimum Wage Regulations 1999, shares of a common fund of tips were not payments “paid by the employer” (*Annabel’s (Berkeley Square) Ltd v Revenue and Customs Commissioners* [2009] EWCA Civ 361).

PAID OFFICE. “Paid office under the . . . District Council” (Local Government Act 1894 (c.73) s.46): see *Greville-Smith v Tomlin* [1911] 2 K.B. 9.

(Local Government Act 1933 (c.51) s.122.) The appointment of a person may be to a “paid office” notwithstanding that for twelve months after the appointment he has agreed to act without salary (*Att-Gen v Ulverston Urban DC* [1944] K.B. 242).

PAID UP. “Paid-up capital”: see *Re Chelsea Water Works Co and Metropolitan Water Board* [1904] 2 K.B. 80, cited CAPITAL.

“Paid-up shares”: see FULLY PAID UP.

PAIN. “Under pain of forfeiting body and goods”: see FELONY.

“‘Paine fort et dure’ is an especiall punishment for such as being arraigned for felony, refuse to put themselves upon the common tryall of God and the Countrey, and thereby are mute, or as mute in law” (Termes de la Ley); see 4 Bl. Com. 325–329, where the phrase is “Peine forte et dure”. Abolished by Felony and Piracy Act 1772 (c.20).

“‘Pains of the law’ is a well-known expression referring to common law pains—the pains which the law prescribes, and which the court, in its discretion, may impose in greater or less degree. But in the case of a statute, where the penalties are specifically described, it is certainly not a fair way to describe a penalty to ask that the ‘pains of the law’ shall be inflicted” (per Macdonald L.J.C., *Chisholm v Mackenzie*, 30 S.L.R. 604; see also *M’Leod v Tarras*, 30 S.L.R. 36; per Lord Wellwood, *M’Ewen v Abinger*, 31 S.L.R. 329).

PAINT. A covenant to “paint” premises at the end of a period does not include distempering (per Cave J., *Perry v Chotzner*, 9 T.L.R. 488). See *Reddy v Brodrick* [1901] 2 I.R. 328; REPAIR.

PAINTING. A “painting” is a pictorial work in colours the object and value of which are artistic. Hence original trade models and working designs, though carefully painted by hand and skillfully designed, were not “paintings” within the Carriers Act 1830 (c.68) (*Woodward v London & North Western Railway*, 3 Ex. D. 121). Nor (per Hawkins J., *Woodward*) would such models or designs have been “original paintings” within the Fine Arts Copyright Act 1862 (c.68); but see *Hildesheimer v Dunn*, 64 L.T. 452.

See PICTURE; ENGRAVING; COPY; PLATE.

PAIR. The word “pair” in a patent did not denote that there were identical members, rather that there were two members which suited or complemented each other (*Warheit v Olympia Tools Ltd* [2002] EWCA Civ 1161, CA).

PAIS. Assurance of land “by matter *in pais*, or deed; which is an assurance transacted between two or more private persons *in pais*, in the country; that is (according to the old common law) upon the very spot to be transferred” (2 Bl. Com. 294).

Estoppel “by matter *in pais*, as by livery, by entry, by acceptance of rent, by partition, and by acceptance of an estate, as here in the case that Littleton putteth (s.667); whereof Littleton maketh a special observation that a man shall be estopped by matter in the countrey, without any writing” (Co. Litt. 352A).

Trial by jury, "called also the trial *per pais*, or by the country" (3 Bl. Com. 349; 4 Bl. Com. 341).

PALACE. "Her Majesty's new palace at Westminster, commonly called the Houses of Parliament" (preamble to Houses of Parliament Act 1867 (c.40)) is not a royal residence, although the throne is in the House of Lords (*Coombe v De la Bere*, 22 Ch. D. 331–336).

PALE-BOTE. A synonym for hedge-bote (*Jenkins v Jenkins*, Noy 23); see BOTE.

PALLET. Stat. Def., Transport Act 1968 (c.73) s.71(8).

PALM. "Palm tree justice": "I understand that to be justice which makes orders which appear to be fair and just in the special circumstances of the case" (per Bucknill L.J., in *Newgrosh v Newgrosh*, 100 L.J. 525; see *Rimmer v Rimmer* [1953] 1 Q.B. 63).

PALMISTRY. "Is a kind of divination, practised by looking upon the lines and marks of the hands and fingers" (Jacob). See hereon *Monck v Hilton*, 2 Ex. D. 268. See also GYPSIES.

Cp. DECEIVE; FORTUNES.

PANEL. "*Pannell*" is an English word, and signifieth a little part; for a pane is a part, and a pannell is a little part; as a pannell of wainscot, a pannell of a saddle, and a pannell of parchment wherein the jurors names be written and annexed to the writ. And a jury is said to be impannelled, when the sherife hath entered their names into the pannell, or little peece of parchment, in *pannello assisæ*" (Co. Litt. 158B). See also *Termes de la Ley*, *Pannell*; Cowel, *Panell*.

PANNAGE. All the definitions "agree that the right of pannage is simply a right granted to an owner of pigs (he is generally entitled to some land; as a rule it was granted to the owners of land of some kind who kept pigs) to go into the wood of the grantor of the right, and to allow the pigs to eat the acorns or beech mast which fell upon the ground. That is what the right has always been defined to be. The pigs have no right to take a single acorn or any beech mast off the tree, either by themselves or by the hands of those who drive them, who might reach them or knock them down. There is not even a right to shake the tree. It is only a right to eat those things which fell" (per Jessel M.R., *Chilton v London*, 7 Ch. D. 562; see also *Termes de la Ley*; Cowel; Jacob; Elph. 606). See PASTURES.

Pannagium, it has been said, sometimes means "a toll for the paving of a city or a causey, or a way" (*Webb's Case*, 8 Rep. 47 a).

"Pannagium is also money taken for the pawnage, or the pawnage itself" (*Shrewsburies Case*, 1 Bulst. 7).

As to the rateability of herbage and pannage, see *Bute v Grindall*, 1 T.R. 338; *Jones v Maunsell*, 1 Doug. 302.

PANNELL. See PANEL.

PANTOMIME. See *Wigan v Strange*, L.R. 1 C.P. 175, cited STAGE PLAY; DRAMATIC.

PAPER. "Paper" is a manufactured substance composed of fibres—whether vegetable or animal—adhering together, in from consisting of sheets of various sizes and of different thicknesses, used for writing or printing or other purposes to which such sheets are applicable (*Att-Gen v Barry*, 28 L.J. Ex. 211; see also *Coles v Dickinson*, 16 C.B.N.S. 604). Paper can generally be now used as a substitute for parchment (*Ex p. Carr*, 5 C.B. 496); and on and from 1 January 1901, paper (of a special kind) has been substituted for parchment for engrossments of wills for probate (45 S.J. 91).

“Nomination paper”: see NOMINATION.

See SHIP PAPERS.

PAR VALUE. This phrase in a will meant par value at the time of the testator’s death (*Re Fison’s Will Trusts* [1950] Ch. 394).

PARALLEL. In the specification of a patent for a horse-clipping machine, “parallel” was construed in its popular sense of going side by side, and not in its purely mathematical sense (*Clarke v Adie*, 2 App. Cas. 423).

PARALYSIS. A declaration (founding a policy of accident insurance) that the assured has not had “paralysis, or fit of any kind”, has been construed as meaning that kind of paralysis which is the result of disease and not of accident; and that therefore a local paralysis resulting in lameness and caused by a fall in infancy, was not meant (*Cruikshank v Northern Accident Insurance*, 33 S.L.R. 134, cited SLIGHT).

PARAMOUNT. “Paramount” is a word compounded of two French words (*par* and *monter*), and it signifies in our law, the highest Lord of the Fee” (*Termes de la Ley*, referring to Fitz. N.B. 135). See also Cowel; 2 BL. COM. 59, 91.

“I do not for my own part care about the expressions ‘paramount intention’ and ‘the truth and honour of the settlement’, or words of that character. To my mind, those expressions are not much more definite than a good many other propositions with regard to the construction of documents” (per Halsbury C., *Law Union & Crown Insurance v Hill*, [1902] A.C. 265).

The incorporation of “Paramount clause” into a charterparty brings into it all the accepted Hague Rules (*Nea Agrex SA v Baltic Shipping Co* [1976] Q.B. 933).

PARAPHERNALIA. A wife’s paraphernalia (in which she takes a qualified ownership, see Wms. P.P. (18th edn) 611, 612) consist of her apparel and ornaments suitable to her station (2 BL. COM. 435, 436; *Mangey v Hungerford*, 2 Eq. Ca. Abr. 156), including gifts from her husband (*Graham v Londonderry*, 3 Atk. 393; *Jervoise v Jervoise*, 17 Bea. 566). Such gifts were not affected by the Married Women’s Property Act 1882 (c.75), but it was a question of fact whether gifts of ornaments from a husband to his wife were absolute or only as paraphernalia (*Tasker v Tasker* [1895] P. 1).

Cp. SEPARATE PROPERTY; SEPARATE USE; PIN MONEY.

PARASITIC ACCESSORY LIABILITY. “In the last 20 years a new term has entered the lexicon of criminal lawyers: parasitic accessory liability. The expression was coined by Professor Sir John Smith in a lecture later published in the Law Quarterly Review (Criminal liability of accessories: law and law reform [1997] 113 LQR 453). He used the expression to describe a doctrine which had been laid down by the Privy Council in *Chan Wing-Siu v The Queen* [1985] AC 168 and developed in later cases, including most importantly the decision of the House of Lords in *R v Powell* and *R v English* [1999] AC 1, [1997] UKHL 45. In *Chan Wing-Siu* it was held that if two people set out to commit an offence (crime A), and in the course of that joint enterprise one of them (D1) commits another offence (crime B), the second person (D2) is guilty as an accessory to crime B if he had foreseen the possibility that D1 might act as he did. D2’s foresight of that possibility plus his continuation in the enterprise to commit crime A were held sufficient in law to bring crime B within the scope of the conduct for which he is criminally liable, whether or not he intended it.” – see *Jogee and Ruddock v The Queen* (Jamaica) [2016] UKSC 8.

PARAVAIL. “Paravaile” . . . signifies in our law, the lowest tenant of the fee, who is tenant to one that holdeth over of an other” (*Termes de la Ley*).

PARCEL

PARCEL. Paintings, exceeding the value of £10, laid upon one another without any covering or tie in a waggon which had sides but no top, were a "parcel or package" within Carriers Act 1830 (c.68) ss.1, 2 (*Whaite v Lancashire & Yorkshire Railway*, L.R. 9 Ex. 67).

"Packed parcel" as contrasted with "enclosure" or "enclosed parcel", for the purpose of carriage: see *Crouch v Great Northern Railway*, 11 Ex. 742.

"Parcel rates" of carriage: see *Parker v Great Western Railway*, 11 C.B. 545.

"Parcel" of margarine, within Food and Drugs, etc. Act 1928 (c.31) s.6 was synonymous with "portion" (per Madden J.), and included a slice cut off, in the purchaser's presence, from a duly branded "package" of margarine, e.g. a butt, and should have had its proper label (*Maguire v Porter* [1905] 2 I.R. 147). Several and separate pounds of margarine, each partially covered with paper, placed together in a shop window in a pyramidal group and touching each other, formed one "parcel", and were sufficiently labelled by a single label placed at the base of the pyramid so as to extend across the whole of the bottom portion of the lowest pieces (*Parkinson v McNair*, 93 L.T. 553). Cp. *McNair v Horan*, 91 L.T. 555, cited PACKAGE.

"Parcel" (Fertilisers and Feeding Stuffs Act 1926 (c.45) s.4(3)). Where fertiliser is kept by the manufacturers in one-cwt. bags arranged 20 at a time on pallets, then each full pallet is a "parcel" for the purposes of this section, and not each individual bag (*Soil Fertility v Breed*, 67 L.G.R. 162).

The "parcels" of a conveyance usually begin with the words "all that", and contain a description of the property conveyed: see 2 Bl. Com. Appendix ii.

"Parcella terræ", a small piece of land" (Cowel).

A declaration in a will that subsequent testamentary writings "shall be held and taken to be part and parcel" of the will is insufficient to extend to gifts in a codicil an exemption from duties which the will contains as regards the gifts in it (*Brown's Trustees v Gow*, 40 S.L.R. 62).

Stat. Def., Post Office Act 1953 (c.36) s.87(1).

See PACKAGE.

PARCEL OF LAND. "Parcel of land either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral", in Agricultural Holdings Acts: see *Re Lancaster and Macnamara's Arbitration* [1918] 2 K.B. 472; *Re Russell & Harding's Arbitration*, 67 S.J. 123; *Re Joel's Lease* [1930] 2 Ch. 359.

PARCENERS. "Many times parceners are called coparceners" (Co. Litt. 164B). As to description and division of parceners, see Co. Litt. 163A, et seq.; *Termes de la Ley*; Jacob.

"None are called parceners by the common law but females, or the heires of females, which come to lands or tenements by descent; for if sisters purchase lands or tenements, of this they are called joyntenants, and not parceners" (Litt. s.254); and co-heiresses who take as such under words of purchase are joint tenants (*Berens v Fellowes*, 56 L.T. 391; *Re Baker, Pursey v Holloway*, 79 L.T. 343; see also HEIR; RIGHT HEIRS).

Parceners take as tenants in common (2 Bl. Com. 188). But see Administration of Estates Act 1925 (c.23). See also *Owen v Gibbons* [1902] 1 Ch. 646, cited RIGHT HEIRS.

PARDON. Pardon is the remitting or forgiving of a crime; and is *ex gratia Regis* (Cowel; Jacob). See also *R. v Harrod*, 2 C. & K. 294; *Re Mosely* [1893] A.C. 138, cited CRIME.

A pardon is a remission of guilt; an amnesty is oblivion (*Ex p. Law*, 35 Georgia 296).

See FREE PARDON; THINK FIT.

PARKING. “I reject the submission that the concept of ‘parking’ in condition 4 is to be regarded as including the removal of a vehicle from the place where it has been parked. That is to distort the natural and ordinary meaning of the word. To ‘park’ a vehicle is to bring it to a halt and to leave it temporarily where it is; the relevant definitions in the Shorter Oxford English Dictionary (5th edition) are ‘[to] bring (a vehicle) to a halt in a stationary position intended to be clear of the flow of traffic’, and ‘[to] leave [it] in a convenient place until required’. It is not a verb one can use to describe the action of moving the vehicle from the place where it has been left – which is the activity Mr Keir described in correspondence with the council and in his evidence as ‘unparking’. The exception in the condition for ‘the parking of coaches and other vehicles associated with the Coach Park/Depot hereby permitted’ relates to the parking of coaches and buses when they return to the depot in the evening, not to their engines being started and run for some five minutes before they can depart from the site at the beginning of the working day. It also relates to the parking of vehicles used by the operator’s employees, which is not contentious in these proceedings.” (*XPL Ltd, R (On the Application Of) v Harlow Council* [2016] EWCA Civ 378.)

PARENT. The ordinary sense of the word “parent” is father or mother (*Sibley v Perry*, 7 Ves. 530; see also *ISSUE*; 3 Jarm., (7th edn), 1568–1572); but it may mean any lineal ancestor (*Ross v Ross*, 20 Bea. 645: “I have tried hard to understand that part of the judgment in *Ross v Ross* that deals with the shifting meaning of the word ‘parent’”; per Brett L.J., *Ralph v Carrick*, 48 L.J. Ch. 809). But “parent” in s.2 of the Intestates Moveable Succession (Scotland) Act 1855 (c.23) meant father, and did not include grandfather: see *Adams’ Executrix v Maxwell* [1921] S.C. 418.

But see now the Family Law Reform Act 1987 (c.42) s.1, which lays down as a rule of construction that references to relationships such as parent and child, brother and sister are to be construed, unless a contrary intention appears, without regard to whether or not any person’s mother or father were married to each other at any particular time. See also *Legitimacy Act 1976* (c.31) s.1(1).

Where there is a condition in restraint of marriage without the consent of “parents”, a surviving parent may give the consent (*Dawson v Oliver-Massey*, 2 Ch. D. 753; *Booth v Meyer*, 38 L.T. 125). See hereon *Re Brown*, 18 Ch. D. 61; *CONSENT*.

“The use of the word ‘parent’ in connection with ‘issue’ does not necessarily have the effect of cutting down the word ‘issue’ so as to mean ‘children’” (per Lord Greene M.R., *Re Hipwell* [1945] 2 All E.R. 476).

The use of the words “parents share only” in a provision in a settlement imports a stirpital division (*Re Earle’s Settlement Trusts*, *Reiss v Merryweather* [1971] 1 W.L.R. 1118).

“Parental dominion”: parental dominion (influence) does not necessarily cease when the child marries and leaves home (*Lancashire Loans Ltd v Black* [1934] 1 K.B. 380).

As to gifts from a child to his parent, see *UNDUE INFLUENCE*. As to construction of parent in a will, see *Re Timson* [1916] 2 Ch. 362.

“Parent” (*Immigration Act 1971* (c.77) s.2(1)(b)) does not include the father of an illegitimate child (*R. v Immigration Appeals Adjudicator*, *Ex p. Crew*, [1982] Imm. A.R. 94).

PARENT

“Parent” (Social Security Act 1975 (c.14) s.38(6)). The natural mother of a child adopted by its grandmother is not the “parent” of the child for the purpose of this Act, even when, on the death of the grandmother, she takes the child into her home (*Secretary of State for Social Services v Smith* [1983] 1 W.L.R. 1110).

The unmarried cohabitee of a mother was not a “parent” for the purposes of the financial provisions for children contained in Sch.1 to the Children Act 1989 (c.41) (*J. v J. (A Minor, Property Transfer)* [1993] 2 F.L.R. 56). A person who had had his or her parental rights removed remained a parent for the purposes of the Children Act 1975 (c.72) until an adoption order was pronounced (*D. v Grampian Regional Council*, 1994 S.L.T. 1038).

(Adoption Act 1976 (c.36) s.16.) A putative father is not a “parent” for the purposes of this Act (*Re L. (a Minor) (Adoption)* [1991] 1 F.L.R. 171).

Once an adoption order has been made a natural parent is no longer a “parent” for the purposes of s.10 of the 1989 Act and accordingly would require leave to apply for a contact order under s.8 (*Re C. (A Minor) (Adopted Child: Contact)* [1993] 3 W.L.R. 85).

(Adoption Act 1976 (c.36) s.72 as amended by Children Act 1989 (c.41) Sch.10.) “Parent” under s.72(1) of the 1976 Act meant a parent with parental responsibility for the child under the Children Act 1989 unless the context otherwise required (*Re C. (A Minor) (Adoption: Parties)* [1995] 2 F.L.R. 483).

“Parent” meant biological parent rather than someone exercising a parental role (*R. v Governors of La Sainte Union Convent School, Ex p. T.* [1996] E.L.R. 98).

Before the enactment of the Human Fertilisation and Embryology Act 1990 (c.37), a male parent meant a biological parent (*Re M. (Child Support Act: Parentage)* [1997] 2 F.L.R. 90).

(Education Act 1993 (c.35) s.169.) A parent was one who had full-time care on a settled basis for a child so that a foster parent could be included in the definition even though the local authority exercised parental responsibility for the child (*Fairpo v Humberside CC* [1997] 1 All E.R. 183).

Stat. Def., the term “parent” is now usually, although not exclusively, defined in statute by reference to the concept of parental responsibility under the Children Act 1989 (c.41) (particularly ss.2 and 3): see, for example, the Adoption Act 1976 (c.36) s.72.

Note also that “child” is sometimes defined as including adopted child, glossing the meaning of “parent” accordingly: see, for example, the Income and Corporation Taxes Act 1988 (c.1) s.832(5).

For a wide definition of “parent” (dealing expressly with the possibility of institutional parents) see Education Act 1996 (c.56) s.576.

In Acts pre-dating 1989, the term was commonly defined by way of including references to guardians and persons with custody: see, for example, the Education Act 1944 (c.31) s.114. And it was common to find references to illegitimate relationships, something which is not now necessary as a result of the Family Law Reform Act 1987 (c.42) s.1.

Difficult questions about parentage arise in relation to artificial insemination and other recent medical advances. For an early attempt to define “father” and “mother” with this in mind, see the Human Fertilisation and Embryology Act 1990 (c.37) s.27 and 28.

Stat. Def., including a father not married to the mother at the time of birth but who has a residence order in respect of the child (s.67(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6)).

Stat. Def., including any person looking after a child (s.4(2) of the Care Standards Act 2000 (c.14)).

“The Children Act 1989 does not define the term ‘parent’ used in section 10(4)(a). There is also no definition of ‘father’ in CA 1989. We therefore have to look elsewhere for an applicable statutory definition. In this context, I respectfully agree (as did the judge) with the observations of Butler-Sloss LJ, as she then was, in a quite different context in *M v C and Calderdale MBC* [1993] 1 FLR 505, 509 that the natural and ordinary meaning of the word ‘parent’ is not fixed, but changes according to the context in which it is used. Mr. J is manifestly not E’s natural parent. It is therefore necessary to see if he comes within the relevant statutory definition of parent contained in the relevant Act of Parliament. . . . Two Acts of Parliament define parenthood in the context of AID. The first is the Family Law Reform Act 1987 (FLRA 1987). The second is the Human Fertilisation and Embryology Act 1990 (HFEA 1990). The judge was addressed, and decided the case, on the basis that s.28 of HFEA 1990 applied. He was not invited to consider FLRA 1987, s.27. In this court, however, the consensus amongst counsel was that FLRA 1987 applied to the facts of this case, given the date on which AID must have occurred. In my judgment, for the reasons which follow, HFEA s.28 does not apply, and this case is governed by FLRA 1987.” (*J. v C.* [2006] EWCA Civ 551 per Wall L.J. at [17]–[18].)

See *Re G. (Children)* [2006] UKHL 43 and [2007] CLJ 30–32.

Stat. Def., “means a parent of a young child, and includes any individual who—(a) has parental responsibility for a young child, or (b) has care of a young child” (Childcare Act 2006 s.2(2)).

Stat. Def., Child Poverty Act 2010 s.27; Equality Act 2010 s.212.

For discussion of the modern concept of parenthood see *AB v CD* [2013] EWHC 1418 (Fam).

See CHILD; FATHER; MOTHER.

PARENT COMPANY. Stat. Def., Companies Act 1989 (c.40) s.21.

PARENTAL DOMINION. See PARENT.

PARENTAL DUTY. “Unmindful of his parental duties” (Custody of Children Act 1891 (c.3) s.3): see *Re O’Hara* [1900] 2 I.R. 244, cited ABANDONMENT.

PARENTAL RESPONSIBILITY. An order remanding a young person to local authority accommodation under the Children and Young Persons Act 1969 (c.54) s.23 did not confer parental responsibility on a local authority (*North Yorkshire CC v Selby Youth Court Justices* [1995] 1 W.L.R. 1).

PARENTAL RIGHTS. A stepfather of two children did not acquire “parental rights” within the meaning of the Guardianship of Minors Act 1971 (c.3) s.5(1) (*Re N. (Minors)* [1974] Fam. 40).

“Parental rights and duties”: Stat. Def., Children Act 1975 (c.72) s.85; Child Care Act 1980 (c.5) s.3.

PARENTING ORDER. Stat. Def., Anti-social Behaviour Act 2003 s.26A inserted by Police and Justice Act 2006 s.24.

PARI PASSU. “Save as aforesaid, all debts provable under the bankruptcy shall be paid *pari passu*” (Bankruptcy Act 1869 (c.71) s.32—see now Bankruptcy Act 1914

(c.59) s.33(7)): includes bona fide volunteer debts, as well as those for valuable consideration (*Re Stewart, Ex p Pottinger*, 8 Ch. D. 621).

Although Companies Act 1862 (c.89) s.133(1)—see Companies Act 1948 (c.38) s.302—says that the assets of a company in voluntary liquidation are to be “applied in satisfaction of its liabilities *pari passu*”, yet, as the Crown is not mentioned, its right to priority is not affected (*Re Henley*, 9 Ch. D. 469; *Re Oriental Bank*, 28 Ch. D. 643; but see *Re Regent Stores*, 38 L.T. 130).

As to the prerogative right of the Crown in a winding-up to payment of its debt in priority to all other creditors of the company, see *Re Webb & Co* [1922] 2 Ch. 369; affirmed, [1923] A.C. 647; *Re Winget Ltd*, 131 L.T. 240.

Since the passing of the Preferential Payments in Bankruptcy Act 1888 (c.62)—see Bankruptcy Act 1914 (c.59) s.33—*Re Henley & Co* has ceased to be directly applicable to the case of a winding-up of a company. See *Food Controller v Cork* [1923] A.C. 647. Debentures purchased or paid off, or (on paying off a loan thereon) re-acquired, by the company issuing them and re-issued by such company, are not entitled to rank “*pari passu*” with the remainder of the series of which they originally formed part (*Re Tasker* [1905] 1 Ch. 283, considering *Re Routledge* [1904] 2 Ch. 474; *Re Tasker* was affirmed [1905] 2 Ch. 587; see also *Re Perth Electric Tramways* [1906] 2 Ch. 216, cited ISSUE OF DEBENTURES; *Dey v Rubber, etc. Corp* [1923] W.N. 222).

Where a company’s debentures state that they are to rank “*pari passu*”, the power given by them to appoint a receiver is a fiduciary power and must be fairly exercised in the interests of all the debenture-holders (*Re Maskelyne Typewriter Ltd* [1898] 1 Ch. 133).

PARISH. A parish “is the circuit of ground in which the people who belong to one church do inhabit, and the particular charge of a secular priest” (Jacob; see *Re Sandbach School* [1901] P. 20). As to the division of parishes, see Phil. Ecc. Law, Pt 9, Ch. 6.

A legacy to the “parish” of C, without saying what for, was held a gift to the POOR of the parish (*West v Knight*, 1 Ch. Ca. 134); but a gift to the “parish church” of H was held to be for the churchwardens for the repairing and adorning of the church (*Att-Gen v Ruper*, 2 P. Wm s.125). See also *Re Simson* [1946] Ch. 299, cited CHARITABLE PURPOSE, and *Re Norton’s Will Trusts* [1948] 2 All E.R. 842, cited CHARITABLE PURPOSE. Cp. *Hoare v Osborne*, L.R. 1 Eq. 585, cited CHURCH.

In all Acts of Parliament passed since 1866, “‘parish’ shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed” (Interpretation Act 1889 (c.63) s.5); that definition is taken from Poor Law Amendment Act 1866 (c.113) s.18, which made more precise the definition contained in Burial Act 1852 (c.85) s.52, on which see *R. v Sudbury*, 27 L.J.Q.B. 232.

“Parish” (Poor Law Amendment Act 1834 (c.76) s.109); see *R. v Forncett St. Mary*, 12 Q.B.D. 160.

Residence for three years “in any parish”, so as to confer a pauper settlement under Divided Parishes and Poor Law Amendment Act 1876 (c.61) s.34, meant “any one parish”, not two or more parishes in the same union (*Plomesgate v West Ham*, 6 Q.B.D. 576).

In such a settlement, a parish did not lose its identity by having an addition made to it under Divided Parishes, etc. Act, as amended and extended by Poor Law Act 1879 (c.54) (*West Ham v London CC* [1904] A.C. 40). See also *West Ham v Edmonton*

[1908] A.C. 1. So where, under Local Government Act 1888 (c.41) s.57, a portion of a parish in one poor law union was transferred to another parish in another poor law union, the latter parish did not lose its identity, and it (including its extended area) belonged to the union to which it belonged previously to such transfer (*Bootle v Whitehaven* [1903] 2 Ch. 142).

Stat. Def., Interpretation Act 1889 (c.63) s.5; Local Government Act 1933 (c.51) s.1; Public Health Act 1936 (c.49) s.1; Representation of the Laity Measure 1956 (No.2) Sch.I(1); Parish Councils Act 1957 (c.42) s.14(2); Local Government Act 1958 (c.55) s.66(1); Rating and Valuation Act 1961 (c.45) s.22(3); Ecclesiastical Fees Measure 1962 (No.1) s.7; Countryside Act 1968 (c.41) s.49(3).

“Parish . . . not under any local authority” (Elementary Education Act 1876 (c.79) s.32): see *R. v Vane*, 51 L.J.M.C. 114.

“Parish” in Vestries Act 1831 (c.60) (Hobhouse’s Act) did not include a separate portion of a divided ancient parish (*R. v Basset*, 17 Q.B. 332).

“Parish”, in the proviso to Poor Law Amendment Act 1844 (c.101) s.64: see *Local Government Board v South Stoneham* [1909] A.C. 57, cited UNION.

“Parish or place” (Beerhouse Act 1840 (c.61) s.1): see *Preston v Buckley*, L.R. 5 Q.B. 391; and as to the same phrase in s.15 of the 1840 Act, see *R. v Charlesworth*, 20 L.J.M.C. 181; *Smith v Redding*, L.R. 1 Q.B. 489; *Rice v Slee*, L.R. 7 C.P. 378.

“Parishes or places” (Church Building Act 1822 (c.72) s.20): see *Craven v Sanderson*, 7 L.J.Q.B. 81.

“Parish or place” (County Rates Act 1852 (c.81) s.34): see *Att-Gen v Deeping, St. Nicholas*, 62 L.J. Ch. 188.

“Parish separately maintaining its own highways” (Highway Act 1862 (c.61) s.32): see *R. v Central Wingland*, 2 Q.B.D. 349.

“Burghal parish”: see BURGH.

“Highway parish”: see HIGHWAY.

“Land tax parish”: see LAND TAX.

“Poor Law parish”: see POOR LAW.

Property “belonging” to a parish: see BELONGING.

See NEW PARISH; PLACE; RURAL; TOWNSHIP; VILL.

PARISH AFFAIRS. For discussion of the meaning of “parish affairs”, see *R. (on the application of Letchworth Garden Heritage Foundation) v Returning Officer for the District of North Hertfordshire* [2009] EWHC 841 (Admin).

PARISH BEADLE. See CONSTABLE; BEADLE.

PARISH CLERK. “A parish clerk, in the ordinary acceptance of the word, is not a spiritual person, and so it was decided generations ago, and by Holt C.J., in particular in *Parker v Clerk*, Holt 599” (per Dr Robertson, *Kemp v Attenborough*, 30 L.T.O., s.211); “it appears to be well settled that the office of parish clerk is a temporal office” (per Chitty J., *Lawrence v Edwards*, No.2 [1891] 2 Ch. 72). He is appointed by the minister for the time being (see *Pinder v Barr*, 24 L.J.Q.B. 30, and *Lawrence v Edwards* [1891] 1 Ch. 144, cited MINISTER).

PARISH COUNCIL. Stat. Def., Local Government Act 1933 (c.51) s.43; Community Land Act 1975 (c.77) s.6.

PARISH PROPERTY. “Parish property” (Local Government Act 1929 (c.17) s.115(6)). relates to what is really property of the parish, such as the village green, vested in the guardians, and not to property held by the guardians for poor law purposes (*London (City) Corp v London CC* [1931] 1 K.B. 25).

PARISH

Stat. Def., Local Government Act 1933 (c.51) s.305; London Government Act 1939 (c.40) s.206.

PARISH RATE. See Local Government Act 1929 (c.17) s.134; Local Government Act 1933 (c.51) s.193.

PARISHIONER. “‘Parishioner’ is a very large word, and takes in not only inhabitants of the parish, but persons who are occupiers of land, that pay the several rates and duties, though they are not resident, nor do contribute to the ornaments of the church” (per Hardwicke C., *Att-Gen v Parker*, 3 Atk. 577; see also *Etherington v Wilson*, 1 Ch. D. 160; *Batten v Gedye*, 41 Ch. D. 507). Cp. INHABITANT.

Stat. Def., City of London Burial Act 1857 (c.35) s.8; Public Worship Regulation Act 1874 (c.85) s.6.

PARK. “*Parke*, this should be written *parque*, which is a French word, and signifieth that which we vulgarly call a parke, of the French word *parquer*, to imparke, to inclose. It is called in Domesday, *parcus*. In law it signifieth a great quantity of ground inclosed, privileged for wild beasts of chase by prescription or by the King’s grant . . . A forest and a chase are not, but a parke must, be inclosed” (Co. Litt. 233A; see also 2 Bl. Com. 38, 416). “To a lawful park three things are required: (1) a liberty either by grant or prescription; (2) inclosure by pale, wall, or hedge; (3) beasts savage of the park: 2 Inst. 199” (Elph. 606). The right of a parker to kill unyielding trespassers in his park (21 Edw. 1, *De Malefactoribus in Parcibus*), was only incident to a strictly legal park (1 Hale, 491; 3 Dyer, 326 b). See hereon Selden Society’s Publications, cxv et seq. See BEASTS. Cp. CHASE; WARREN.

A park is disparked when all the deer are destroyed, “for a park consisteth of vert, and venison, and enclosure; and if it be determined in any of them it is a totall disparking” (*Howard’s Case*, Cro. Car. 60). See also *Vasvasour’s Case*, 2 Leon. 222; WASTE.

By the grant of a “park”, “not onely the priviledge, but the land itselfe passes” (Co. Litt. 5B).

Semble, the modern definition of “park”, is an enclosed (private or public) space of ground set apart for ornament, or to afford the benefit of air exercise or amusement (*Perrin v New York Central Railway*, 36 N.Y. 126).

A park did not cease to be a park within s.75 of the Housing Act 1936 (c.51) when and because it was let for grazing. It might consist of a piece of ground not larger than thirty-five acres (*Re Ripon (Highfield) Housing Order 1936*, *White & Collins v Minister of Health* [1939] 2 K.B. 838, 843); cp. *Payne v Minister of Health*, 58 L.T. 523 (field adjoining house used for grazing and sometimes for sports not within s.75).

Stat. Def., Rating and Valuation Act 1961 (c.45) s.13(2).

See PUBLIC PARK; TOWN PARK.

PARK (IN THE CONTEXT OF A VEHICLE). Stat. Def., “means leaving a vehicle or permitting to remain at rest” (s.52 of the Terrorism Act 2000 (c.11)).

PARK BOTE. See BOTE.

PARKE’S ACT. The Civil Procedure Act 1833 (c.42); see also WENSLEYDALE’S ACT.

PARKING. “Parking” a car means leaving a car and nothing else (*Ashby v Tollhurst* [1937] 2 K.B. 242, 249).

When a meter bay has been temporarily suspended it ceases to be a “parking place” within the meaning of art.24(3) of the Parking Places (Holborn) (No.1) Order 1960 (No.1132) (*Roberts v Powell*, 64 L.G.R. 173).

PARLIAMENT. "Parliament is the highest and most honourable and absolute Court of Justice in England, consisting of the King, the Lords of Parliament, and the Commons" (Co. Litt. 109B). The constituent parts of Parliament are, "the King's Majesty, sitting there in his royal political capacity, and the Three Estates of the Realm, i.e. the Lords Spiritual, the Lords Temporal (who sit together with the King in one house), and the Commons, who sit by themselves in another. And the King and these three estates, together, form the great corporation or body politic of the kingdom, of which the King is said to be *caput, principium, et finis*" (1 Bl. Com. 153). See SUPREME COURT.

"Full parliament": see *St. John's Peerage Claim* [1915] A.C. 282, cited FULL PARLIAMENT.

"Parliament" in s.4(1) of the Rates Act 1984 (c.33) means the House of Commons (*R. v Secretary of State for the Environment, Ex p. Greenwich LBC, The Times*, December 19, 1985).

See PROCEEDINGS IN PARLIAMENT.

PARLIAMENTARY. "Parliamentary stock": "In order to come within the description 'Government or Parliamentary stocks or funds', a fund ought to be either managed by Parliament, or paid out of the revenues of the British Government, or at least guaranteed by that Government" (per Wood V.C., *Brown v Brown*, 31 L.T.O., s.297). See GOVERNMENT SECURITIES.

"A 'Parliamentary' tax is one that is imposed directly by Act of Parliament" (per Parke B., *Palmer v Earith*, 14 L.J. Ex. 257; but see thereon *R. v Kent Justices*, 29 L.J.M.C. 191). Land tax is a "parliamentary" tax (*Manning v Lunn*, 2 C. & K. 13; *Christ's Hospital v Harrild*, 3 Sc. N.R. 126); but a sewer rate is not (*Waller v Andrews*, 7 L.J. Ex. 68; *Palmer v Earith*, above); nor a local improvement rate (*Bedford Union v Bedford Improvement Commissioners*, 7 Ex. 777); nor a rate made, under a Local Act, for repair of a bridge *ratione tenuræ* (*Baker v Greenhill*, 3 Q.B. 148); nor a county rate which, by statute, was to be levied and paid out of the poor rate (*R. v Aylesbury*, 9 Q.B. 261). See hereon Woodf. (24th edn), 642. Cp. PAROCHIAL RATE; PAROCHIAL TAX; See TAXES.

"Parliamentary election": Stat. Def., Interpretation Act 1978 (c.30) Sch.1.

PARLOGRAPH. See *Re Lindstroem's Trade Mark* [1914] 2 Ch. 103.

PAROCHIAL. See EXTRAPAROCHIAL; PARISH.

PAROCHIAL CHAPELRY. See CHAPELRY.

PAROCHIAL CHARITY. Stat. Def., Local Government Act 1894 (c.73) s.75 (see hereon *Re Ross* [1897] 2 Ch. 397, cited ECCLESIASTICAL CHARITY); Charities Act 1960 (c.58) s.45(1).

PAROCHIAL PURPOSE. See *R. v St. Marylebone* [1895] 1 Q.B. 771; BELONGING.

PAROCHIAL RELIEF. Parochial relief, speaking generally and also as disqualifying a person from being an elector (Representation of the People Act 1832 (c.45) s.36), meant the receipt of any benefit, service, or needful thing, at the cost of, or by persons employed and paid by the parish, to or for the presumptive voter, or his wife, or child under sixteen not being blind or deaf or dumb (Poor Law Amendment Act 1834 (c.76) s.56).

PAROL. "All contracts are, by the laws of England, distinguished into agreements by specialty and agreements by parol"; therefore, a contract in writing not under seal is said to be a "parol" contract (*Rann v Hughes*, 7 T.R. 350-51, fn).

Parol demise includes a writing not under seal as well as a demise by word of mouth (per Denman C.J., *Gibson v Kirk*, 1 Q.B. 856).

As to parol directions by a testator, see WISH.

PARSON. “‘Parson’, *Persona*. In the legal signification it is taken for the rector of a church parochiall, and is called *persona ecclesiæ*, because he assumeth and taketh upon him the parson of the church, and is said to be seised *in jure ecclesiæ*” (Co. Litt. 300A, B); he is “one that hath full possession of all the rights of a parochial church” (Jacob). “A parson, *persona ecclesiæ*, is one that hath full possession of all the rights of a parochial church. He is called parson, *persona*, because by his person the church (which is an invisible body) is represented; and he is, in himself, a body corporate, in order to protect and defend the rights of the church (which he personates) by a perpetual succession” (1 Bl. Com. 384).

“‘Parson impersonee’ is he that is in possession of a Church Appropriate, or Presentative, for so it is used in both cases in Dyer, 40 b and 221 b” (Termes de la Ley). See also 1 Bl. Com. 391.

“Parson or vicar, or where there is no parson or vicar, by the minister of that place for the time being” (91 Canons Ecc. 1604): see *Pinder v Barr*, 24 L.J.Q.B. 30, cited MINISTER.

See hereon PHIL. ECC. LAW, PT 2, Ch. 9.

See CLERGYMAN; RECTOR; REGULAR CLERGYMAN; VICAR.

PARSONAGE. By a charge on a “parsonage” is meant “the endowment of the benefice. It is thus defined in Degge’s *Parson’s Counsellor*, p.190: ‘A parsonage or rectory is a certain portion of land, tythes, and offerings, established by the laws of this kingdom, for the maintenance of the minister that hath the cure of souls within the parish where he is rector or patron, and properly comprehends’—then follows a citation from Spelman’s Glossary—‘*integra ecclesia parochialis, cum omnibus suis juribus, prædiis, decimis, aliisque proventuum speciebus: alias vulgo dictum, beneficium*’” (per Stirling J., *Re Alms Corn Charity* [1901] 2 Ch. 758).

See RECTORY.

PART. “Parts and working gear” (Factories Act 1937 (c.67) s.24(1), now Factories Act 1961 (c.34) s.27(1)) does not cover an electric cable which provided power to a travelling crane (*Gatehouse v Summers (John) & Sons* [1953] 1 W.L.R. 742). See also DANGEROUS.

“Part” of a book (Copyright Act 1842 (c.45)—see Copyright Act 1911 (c.46) s.1(2)): see *Re Cooper* [1895] 1 Ch. 567; *Marshall v Bull*, 85 L.T. 77.

A “part” of a drama, within the Dramatic Copyright Act 1833 (c.15) s.2, did not mean a particle of it, but a substantial or material part (*Chatterton v Cave*, 3 App. Cas. 483; see also *Walter v Steinkopff* [1892] 3 Ch. 489). See DRAMATIC.

“Part of the consideration for a conveyance on sale” (Stamp Act 1891 (c.39) s.56(2)): see *Martin v Inland Revenue*, 91 L.T. 453. Cp. “Partial consideration”, *Re Lombard* [1904] 2 I.R. 632, cited MONEY’S WORTH; *Re Bateman* [1925] 2 K.B. 429.

“Part of a continuous line” of railway communication (Railway and Canal Traffic Act 1888 (c.25) s.25) did not mean “a mere infinitesimal part, but a part which would be substantially treated as a part of the *transitus* between two given places” (per Collins M.R., *London & India Docks Co v Great Eastern Railway and Midland Railway* [1902] 1 K.B. 589, cited RAILWAY COMPANY). Cp. *Chatterton v Cave*, above.

"Part of the equipment of a mine" (Mines and Quarries Act 1954 (c.70) s.81(1)). Pithead baths and a foot rail used therein were part of the equipment of a mine (*Sproat v National Coal Board*, 1970 S.L.T. (N.) 31).

"Part" of an estate: see *Re Fuller and Leathley* [1897] 2 Ch. 144, cited ESTATE.

Part of a "house" or "manufactory" within Lands Clauses Consolidation Act 1845 (c.18) s.92: see HOUSE; MANUFACTORY; *Caledonian Railway v Turcan*, 67 L.J.P.C. 71, cited ROAD.

"Part of a house let as a separate dwelling" (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17) s.12(2)): if a living room was shared, e.g. a kitchen, then the part of the house that was let was not a separate dwelling, see *Neale v Del Soto* [1945] K.B. 144; *Cole v Harris* [1945] K.B. 474; on s.15(3), see *Stanley v Compton* [1951] 1 All E.R. 859.

"Part of a house" (Rent Act 1968 (c.75) s.70). This can include a room let on a weekly basis where room service but no meals are provided, and the room contains a gas ring (*Luganda v Services Hotels* [1969] 2 Ch. 209).

"Part" of "houses, walls, buildings, lands, tenements, and hereditaments" might be acquired compulsorily by a Metropolitan local authority under Michael Angelo Taylor's Act 1817 (c. xxix) ss.80, 81, 82; but that only authorised the taking of such a "part" as would not so sensibly and substantially alter the character and condition of the property from which it was to be taken that such property could no longer be occupied and used for its existing purposes (*Gordon v St. Mary Abbotts* [1894] 2 Q.B. 742; *Gibbon v Paddington* [1900] 2 Ch. 794, both followed in *Thompson v Hammersmith* [1906] 1 Ch. 299, and in *Green v Hackney*, 80 L.J.K.B. 16). On the other hand, where a part of houses, etc. could practically be detached and that part was all that the local authority really required, the owner could not be compelled to sell any more (*Teuliere v St. Mary Abbotts*, 30 Ch. D. 642; *Aldis v London Corp* [1899] 2 Ch. 169). See also *Fernley v Limehouse*, 82 L.T. 524; *Pescod v Westminster* [1905] 2 Ch. 475; TAYLOR'S ACT.

Part of a "house", in Representation of the People Act 1832 (c.45): see HOUSE; DWELLING-HOUSE; SEPARATE OCCUPATION.

"Part of a church left standing" (Faculty Jurisdiction Measure 1964 s.2(3)). A crypt, even though existing underground, can by itself, be "part of a church left standing" for the purposes of this Measure (*Re St. Luke's Cheetham* [1978] Fam. 144).

"Such part of the income" (Finance Act 1939 (c.41) s.15) meant "such part, it may be the whole of the income" (*Chamberlain v Inland Revenue Commissioners* [1945] 2 All. E.R. 351).

"Part of a mine", within the Coal Mines Regulation Act 1872 (c.76), meant "a part having a separate system of ventilation which, by the terms of the statute, is a separate mine" (per Day J., *Wales v Thomas*, 16 Q.B.D. 340).

"Part payment", within Sale of Goods Act 1893 (c.71) s.4: see *Farr, Smith & Co v Messers Ltd*, 44 T.L.R. 48. See also EARNST; PAYMENT.

"Part performance": as to a purchaser's part performance of a contract for sale of land by entering into possession and spending money on the premises, and the principle generally, see *Broughton v Snook* [1938] Ch. 505. See also PERFORMANCE.

"Part of the premises": see *Church v Brown*, 15 Ves. 265, cited ASSIGN; *Russell v Beecham* [1924] 1 K.B. 525; *Carrington, etc. Co v Saldin*, 41 T.L.R. 455.

"Part of a promissory note, bill of exchange, or bank post bill, purporting to be a bank note", etc. (Forgery Act 1861 (c.98) s.16) was not confined to the obligation

contained in such a document, but meant the thing as it was commonly regarded, including, e.g. an engraved ornamental border (*R. v Keith*, 24 L.J.M.C. 110).

Building “used in part for purposes of trade or manufacture and in part as a dwelling-house” (s.74(2) of the London Building Act 1894 (c. ccxiii)) “applies to the case of a shop with living rooms above it” (per Lawrence J., *Carritt v Godson* [1899] 2 Q.B. 193), and did not apply to a public house, because “a publican carries on his business all through the licensed premises” (per Day J., *Carritt*). But if in the case of a public house the magistrate found, as a fact, that the downstairs of a building was to be used for the trade and the upstairs for a dwelling, that finding could not be interfered with, and s.74(2) applied (*Dicksee v Hoskins* [1901] 2 K.B. 660).

Services are rendered “in part within British waters in saving life” from a British or foreign vessel (Merchant Shipping Act 1894 (c.60) s.544), if the crew of a foreign vessel (in distress outside British waters) are there taken off the vessel and are thence brought to an English port where they are landed (*The Pacific* [1898] P. 170). But *The Pacific* is not followed in Scotland, where it is said that, in such a case, the salvage is completed when those who are rescued are placed on the rescuing vessel (*Jørgensen v Neptune Co*, 39 S.L.R. 765). See SALVAGE.

“Safe means of access shall be provided to all parts of the ship” (Shipbuilding Regulations 1931 (No.133) reg.1). The dock itself can be a part of the ship for the purposes of this regulation if the work of repair is done from a position on the dock, e.g. painting the side of the ship (*Hurley v Sanders (J) & Co* [1955] 1 W.L.R. 470).

As to “part of a street”, see *Mile End Old Town v Whitechapel Union*, 45 L.J.M.C. 75; 46 L.J.M.C. 138.

“A codicil is in its nature part of the will” (per Hardwicke C., *St. Alban’s v Beauclerk*, 2 Atk. 639; See also *Fuller v Hooper*, 2 Ves. sen. 242; *Crosbie v Macdoul*, 4 Ves. 610). See HEREIN.

An appointment under a power of a sum “part of” a larger sum subject to the power, only indicates the fund out of which the appointment is to have effect, so that if the larger sum is not wholly realised the sum appointed will not have to abate (*Booth v Alington*, 26 L.J. Ch. 138; see thereon *Re Saunders-Davies*, 34 Ch. D. 482). See also REMAINDER.

“Although it has been held that the words ‘part’ of ‘share’ will not carry an accrued share, it was laid down in *Douglas v Andrews* (14 Bea. 347) that the words ‘part, share and interest’ would carry an accrued share” (per Jessel M.R., *Re Henriques* [1875] W.N. 187, 188, following *Douglas v Andrews*).

A devise of “my part”, even before the Wills Act 1837 (c.26), would generally carry the fee (2 Jarm., (6th edn), 1806; *Woodhouse v Herrick*, 24 L.J. Ch. 649).

“Part thereof”: see *Hewitt v George*, 18 Bea. 522.

“Part and parcel”: see *Brown’s Trustees v Gow*, 40 S.L.R. 62.

“Part time driver” (Good Vehicles (Keeping of Records) Regulations 1935 (No.314) reg.5) included a salesman who was free to use one of the company’s goods vehicles but was under no compulsion to do so (*Gross Cash Registers v Vogt* [1967] 2 Q.B. 77).

“Part of the settled property” (Finance Act 1965 (c.25) s.12). The word “part” here denotes either a distinct item of property or an individual share in settled property, so that, where, under a settlement, each of four daughters were entitled to a life interest in one-quarter share of the trust fund, the life interest of one of them was an interest in “part of the settle property” and was therefore to be treated as being settled property under a separate settlement (*Pexton v Bell*; *Crowe v Appleby* [1976] 1 W.L.R. 885).

“Part of a business” (Finance Act 1965 (c.25) s.34(1)). Where a farmer sold part of his land with planning permission for development, and continued farming the remainder on the same basis as before, it was held that he had not sold “part of a business” but merely an asset of that business (*McGregor v Adcock* [1977] 1 W.L.R. 864).

“Parts, pertinents and others” in a lease covered all heritable property but could not apply to moveables such as floor coverings (*Lowe v Quayle Munro Ltd*, 1997 S.C.L.R. 701).

“Part of a business”: see BUSINESS.

“Part of a cause of action”: see CAUSE OF ACTION.

“Attributable to that part”: see ATTRIBUTABLE.

“Material part”: see MATERIAL PART.

“Vehicle . . . parts and accessories”: see VEHICLE.

“Any part of land”: see ANY.

“Part ownership”: see PARTNERSHIP.

“Part of a parish”: see PARISH.

“Any part of demised premises”: see ANY.

“Whole or part”: see WHOLE.

“Wholly or in part”: see WHOLLY.

“Part disposal”: Stat. Def., Finance Act 1965 (c.25) s.22(2).

See COMPONENT PART; SUBSTANTIAL PART.

PART (OF UNITED KINGDOM). Stat. Def., “means—

- (i) England,
- (ii) Northern Ireland,
- (iii) Scotland, and
- (iv) Wales” (Civil Partnership Act 2004 (c.33) s.31).

PART OF A TRADE. To establish a part of a trade for the purposes of s.18(2) of the Capital Allowances Act 1990 requires not merely one or more activities carried out in the course of a trade, but a viable section of a composite trade (*Maco Door and Window Hardware (UK) Ltd v Revenue and Customs Commissioners* [2008] UKHL 54).

PART WITH. If donee in fee “shall not have disposed of and parted with” the property: see *Doe d. Stevenson v Glover*, 1 C.B. 448, cited DISPOSE OF. See *Russell v Beecham* [1924] 1 K.B. 525; *Carrington, etc. Co v Saldin*, 41 T.L.R. 455.

A lessee’s covenant not to “part with the possession of the demised premises or any part thereof” is broken only if the lessee entirely excludes himself from the legal possession of part of the premises (*Stening v Abrahams* [1931] 1 Ch. 470).

A covenant not to “part with the possession of the demised premises” was not broken by a lessee who in law retained the possession even though he allowed another to use and occupy the premises (*Lam Kee Ying Sdn Bhd v Lam Shes Tong* [1975] A.C. 247).

“Part with possession” (Firearms Act 1968 (c.27) s.57(4)). A person who left two shotguns for safekeeping at the home of another while they went on holiday together had “parted” with possession within the meaning of this section (*Hall v Cotton* [1986] 3 W.L.R. 681).

“Part of an open space”: see OPEN SPACE.

See ANY PART.

PARTIAL

See ASSIGN; MORTGAGE; UNDERLEASE.

PARTIAL ACCEPTANCE. Stat. Def., Bills of Exchange Act 1882 (c.61) s.19(2)(b).

PARTIAL CONSIDERATION. See *Martin v Inland Revenue Commissioners*, 91 L.T. 453. “Partial consideration” in Finance Act 1894 (c.30) s.3(2) meant something less than the full and fair value as between buyer and seller: see *Re Baroness Bateman* [1925] 2 K.B. 429.

PARTIAL DEMOLITION. “There has to be a distinction drawn somewhere, therefore, between ‘alteration’ and ‘demolition of part’ . . . So, for example, if the proposal is either to block up a window or to make a new window opening, that would inevitably involve the removal of some existing fabric, but the single operation proposed, taken as a whole, is ‘alteration’, not ‘partial demolition’. Similarly, where an extension is to be built, and a part of the nave wall is to be removed to provide access through to the new building, that is best characterised as ‘extension’ not ‘partial demolition’, even though part of the wall is removed” (*Re St. James’s Chapel, Callow End* [2001] 1 W.L.R. 835, Worcester Consistory Court per Mynors C.).

PARTIAL LOSS. “This expression includes both a deterioration of all or any part of, and a total destruction of a part of, the subject of insurance” (Wood, 359, citing 2 Phillips, No.1422; see also *Francis v Boulton*, 65 L.J.Q.B. 153).

Stat. Def., Marine Insurance Act 1906 (c.41) ss.56, 64, 69–71.

See TOTAL LOSS; LOSS; TRANSHIPMENT.

PARTIALITY. See IMPARTIALITY.

PARTIALLY. See WHOLLY.

PARTICATA TERRÆ. “A rood” (Elph. 606).

PARTICIPATE. Where beneficiaries are to “participate” in a trust property, and there is no direction as to the shares to be taken, they take as tenants in common, in equal shares and proportions (*Liddard v Liddard*, 29 L.J. Ch. 619). In *Robertson v Fraser* (6 Ch. 696), Hatherley C. said, “the word ‘participate’ clearly implied a sharing or division, and a tenancy in common was the natural consequence”.

“Participate” in profit of contract within meaning of Local Government Act 1894 (c.73): see *Everett v Griffiths* [1924] 1 K.B. 941. See also CONCERNED IN; SHARE.

“Participation . . . in profits” (Prevention of Fraud (Investments) Act 1958 (c.45) s.13(1)(b)) means participation in profits as an investment in the financial sense (*Hughes v Trapnell* [1963] 1 Q.B. 737).

“Participate in any treatment” (Abortion Act 1967 (c.87) s.4(1)). A medical receptionist, required to type letters referring patients for abortion, could not, in so doing, be held to be participating in the treatment for termination of pregnancy authorised by this Act (*R. v Salford Health Authority, Ex p. Janaway* [1988] 3 W.L.R. 1350).

PARTICIPATION (IN BROADCAST). Stat. Def., Wireless Telegraphy Act 2006 s.38(3).

PARTICIPATOR. Stat. Def., Income and Corporation Taxes Act 1988 (c.1) s.417.

PARTICULAR. “If a condition of sale provide compensation for any mistake in the description of the lots or for any error or misstatement ‘in this particular’, the latter words will be construed ‘in these particulars’, so as to embrace an error in the particulars” (Sug. V. & P. 15, citing *White v Cuddon*, 8 Cl. & F. 766). See ERROR.

“Essential particular”: see ESSENTIAL.

“Material particular”: see CORROBORATED.

“Work of a particular kind”: see **WORK**.

PARTICULAR AVERAGE. See *Great Indian Peninsular Railway v Saunders*, 30 L.J.Q.B. 218; 31 L.J.Q.B. 206; *Kidston v Empire Marine Insurance*, L.R. 1 C.P. 535; L.R. 2 C.P. 357; Arn. (13th edn), Pt 3, Ch. 27.

“Particular average loss”: see hereon *Marine Insurance Act 1906* (c.41) ss.64, 76; *Fabrique, etc. Société Anonyme v Large* [1923] 1 K.B. 203.

See **GENERAL AVERAGE**; **AVERAGE**; **FPA**.

PARTICULAR BREACH. See *Fletcher v Nokes* [1897] 1 Ch. 271, and *Penton v Barnett* [1898] 1 Q.B. 281, cited **NOTICE**.

PARTICULAR CHARGES. See *Kidston v Empire Marine Insurance*, L.R. 1 C.P. 535; L.R. 2 C.P. 357

PARTICULAR CIRCUMSTANCES. (*Animals Act 1971* (c.22) s.2(2)(b).) The tendency of a dog to defend its territory fiercely can amount to “particular circumstances” under this section, even when the animal is known to be generally docile (*Curtis v Betts* [1990] 1 W.L.R. 459).

PARTICULAR DOCUMENTS. These words in s.2(4)(b) of the *Evidence (Proceedings in Other Jurisdictions) Act 1975* (c.34) are to be construed strictly, and apply only to clearly identified documents shown to exist or to have existed (*Asbestos Insurance Coverage Cases* [1985] 1 W.L.R. 331).

PARTICULAR ESTATE. A particular estate is an estate less than a fee simple; thus it is said, “a reversion is where the residue of the estate always doth continue in him that made the particular estate, or where the particular estate is derived out of his estate”, e.g. where a “tenant in fee simple maketh gift in taile” (*Co. Litt.* 22B).

See *Contingent Remainders Act 1877* (c.33) s.1.

See **REMAINDER**.

PARTICULAR FUND. Order for payment of money “out of a particular fund”: see *Diplock v Hammond*, 23 L.J. Ch. 550.

PARTICULAR MANNER. See **DISTINCTIVE**.

PARTICULAR MATTER ARISING UNDER THE BANKRUPTCY. See **BANKRUPTCY**.

PARTICULAR PROVISION. As to this phrase in *Pilotage Act 1825* (c.125) s.59, and in *Merchant Shipping Act 1894* (c.60) s.618(1)(iii), see *The Killarney*, 30 L.J.P.M. & A. 41; *Hadgraft v Hewith*. L.R. 10 Q.B. 350; *The Hankow*, 4 P.D. 197, followed in *The Umsinga*, 80 L.J.P. 90. See also **TRINITY HOUSE OUTPORT DISTRICTS**. Cp. now *Pilotage Act 1913* (c.31) s.52.

PARTICULAR PURPOSE. “Particular purpose”, in the case of **ademption**: see *Harris v Grierson* [1922] 2 Ch. 359, and cases therein cited.

“Particular purpose” (*Sale of Goods Act 1893* (c.71) s.14(1)): see *Bristol Tramways Co v Fiat Motors* [1910] 2 K.B. 381, cited **TRADE NAME**; *Morelli v Fitch*, 140 L.T. 21. Goods have been held to be required for a “particular purpose” within this section in a case where a buyer made known that he required them to compound into foodstuffs for animals and poultry (*Kendall (Henry) & Sons v Lillico (William) & Sons* [1969] 2 A.C. 31). See *Ashington Piggeries v Hill* [1971] 2 W.L.R. 1051.

See **ADEPTION**; **MAKE KNOWN**; **USE AND BENEFIT**.

PARTICULAR REGARD. See **MUST HAVE PARTICULAR REGARD**.

PARTICULAR RISK. Policy of sea insurance must specify “the particular risk or adventure” (*Stamp Act 1891* (c.39) s.93(3)): see hereon *Royal Exchange Assurance v Sjöforsakrings, etc.* [1902] 2 K.B. 384, cited **POLICY**.

PARTICULAR SEARCH. See SEARCH.

PARTICULAR SOCIAL GROUP. The members of a group had to share an attribute which existed independently of the feared persecution, which united them and set them apart from the rest of society and which was recognised by society generally in order to qualify as a “particular social group” within the meaning of the Convention and Protocol relating to the Status of Refugees (1951) art.14, and women who had been accused of adultery and had been abandoned by their husbands so that they faced persecution in the form of emotional and physical abuse and social ostracism could not form a “particular social group” for the purposes of the Convention (*R. v Immigration Appeal Tribunal, Ex p. Shah* [1998] 1 W.L.R. 74).

Persons who shared a common employment did not constitute a social group within the meaning of art.1A(2) since the defining characteristic of a social group had to be one which was fundamental to the individual identities or conscience of its members (*Ex p. Shah* [1998] 1 W.L.R. 74 distinguished) (*Ouanes v Secretary of State for the Home Department* [1998] 1 W.L.R. 218).

The common characteristic of a particular social group for the purposes of art.1A(2) of the 1951 Convention on Refugees can be innate and immutable, can consist of gender, does not necessarily include cohesiveness and could be recognisable in relation only to certain places (*Fornah v Home Secretary* [2006] UKHL 46).

PARTICULAR TRUST. “Particular and specific trust”: see per Romilly M.R., *Sons of Clergy Corp v Sutton*, 29 L.J. Ch. 393; and per North J., *Sons of Clergy Corp v Skinner* [1893] 1 Ch. 178. Cp. see “express trust”, under EXPRESS.

PARTICULARLY. See DESCRIBE.

PARTICULARS. “Particulars” of a claim for compensation within the meaning of Agriculture Act 1920 (c.76) s.18: see *Jones v Evans* [1923] 1 K.B. 12.

“Particulars of claim” to compensation under the Agricultural Holdings Act 1923 (c.9) s.16(2) (cp. now Agricultural Holdings Act 1948 (c.63) Sch.6 para.6): see *Spreckley v Leicestershire CC* [1934] 1 K.B. 366; *Re O'Connor and Brewin's Arbitration* [1933] 1 K.B. 20; *Adam v Smythe*, 1949 S.L.T. 5.

The word “particulars” in the phrase “such particulars as they think necessary” in s.414(1) of the Income Tax Act 1952 (c.10), now s.481(1) of the Income and Corporation Taxes Act 1970 (c.10), means items or details or points, and its scope is limited by the words ‘as they think necessary’ (*Royal Bank of Canada v IRC* [1972] Ch. 665).

PARTIES. See PARTY; PRIVY.

PARTIES CONCERNED. For the purposes of art.88 of the EC Treaty and locus standi in relation to investigations in connection with state aid, “parties concerned” means persons whose interests might be affected by the granting of aid and includes, in particular, competing undertakings and trade associations (*Asklepios Kliniken GmbH v Commission of the European Communities* (Case T-167/04) CFI).

PARTISAN. “Although there was some earlier suggestion on behalf of the defendant that ‘partisan’ [in s.406 of the Education Act 1996] might relate to ‘party political’, it soon became clear that it could not be and is not so limited. . . . In my judgment, the best synonym for it might be ‘one sided’.” (*R. (Dimmock) v Secretary of State for Education and Skills* [2007] EWHC 2288 (Admin) per Burton J. at [11].)

PARTITION. “It is clear that a power to make partition of an estate will not authorize a sale or exchange of it; but it has frequently been a question amongst conveyancers, whether the usual power of sale and exchange does not authorise a

partition, and several partitions have been made, by force of such powers, under the direction of men of eminence" (Sug. Pow. (8th edn) 856). The learned author proceeds to discuss *Abell v Heathcote* (2 Ves. 98), *Re McQueen and Farquhar* (11 Ves. 467), *Att-Gen v Hamilton* (1 Mad. 214), and *Bradshaw v Fane* (25 L.J. Ch. 413); but his conclusion is (857): "Until the question shall receive further decision, it can scarcely be considered clear that a power to exchange will authorise a partition". That further decision was, however, furnished in *Re Firth and Osborne* (3 Ch. D. 618), in which Jessel M.R. reviewed all the authorities hereon, and without hesitation ruled that a partition may be effected through a power of sale and exchange.

On partition generally, see Partition Acts 1868 (c.40); 1876 (c.17), and *Patel v Premabhai* [1954] A.C. 35. See SEVERANCE.

PARTNER. Stat Def., Housing Grants, Construction and Regeneration Act 1996 (c.53) s.101.

Stat. Def., "a person is another's partner (whether they are of different sexes or the same sex) if they live together as partners in an enduring family relationship" (Sexual Offences Act 2003 (c.42) s.27).

For the purpose of a standard form clause in a will, a reference to a partner includes a reference to a member of a limited liability partnership (*Re Rogers* [2006] EWHC 753 (Ch)).

A person can be a partner without sharing in the profits of the business concerned (*M Young Legal Associates Ltd v Zahid Solicitors (a firm)* [2006] EWCA Civ 613; see also New Law Journal, 28 July 2006, p.1195).

Stat. Def., "means a person with whom the individual lives as a couple (including a person with whom the individual is not currently living but from whom the individual is not living separate and apart)" (Criminal Defence Service (Information Requests) Regulations 2009 reg.1(2)).

Stat. Def., a person is the partner of a deceased person if the two of them (whether of different sexes or the same sex) were living as partners in an enduring relationship at the time of the deceased person's death (Coroners and Justice Act 2009 s.47).

"45. The words 'employee' and 'partner' are legal terms with a fairly clear meaning describing legal concepts. The strictness of the meaning of 'employee' and of the reference to 'working . . . fulltime' is only emphasised by the proviso which refers to the case of a person undergoing agricultural training. I do not see it as appropriate to read the word 'employee' in a broad way or to read the word 'partner' so as to extend to a sole trader in a different business to that apparently described by the sub-clause." (*Creasey v Sole* [2013] EWHC 1410 (Ch).)

See NON-ACTIVE PARTNER.

PARTNERSHIP. See Partnership Act 1890 (c.39).

As to the postponement of loan until ordinary creditors are paid in full under s.3, the contract is not confined to one in writing (*Re Fort* [1897] 2 Q.B. 495, cited CONTRACT).

"Trading partnership": see *Wheatley v Smithers* [1906] 2 K.B. 321, cited TRADER.

On the death of partner the assets are "to be valued either by mutual agreement, or valuation in the usual way": see *Hordern v Hordern*, 80 L.J.P.G. 15.

As to the notice to determine a partnership, see *Green v Howell* [1910] 1 Ch. 495, cited FLAGRANT.

See also Limited Partnerships Act 1907 (c.24), which authorises the formation of limited partnerships consisting of "general partners" and "limited partners" (see s.4);

PARTNERSHIP

s.6(4), relating to winding up, was repealed by Companies (Consolidation) Act 1908 (c.69), on which see *Re Hughes & Co*, 80 L.J. Ch. 262. See Bankruptcy Act 1914 (c.59), s.127.

A bequest of all “my share, right, and interest” in a partnership, does not include a debt due to the testator from the partnership (*Re Beard*, 57 L.J. Ch. 887).

“During the partnership”: see DURING.

Stat. Def., excluding partnership which is constituted under the law of a place outside the United Kingdom and is a body corporate, s.31(5) of the Financial Services and Markets Act 2000 (c.8).

See ASSOCIATION OF NATURAL OR LEGAL PERSONS; COMPANY; COPARTNERSHIP; INVOLVE.

PARTNERSHIP ASSETS. In s.42 of the Partnership Act 1890 the reference to “the partnership assets” is a reference to the net partnership assets, being what remains from the gross assets for distribution between partners after payment of debts and liabilities (*Sandhu v Gill* [2005] EWCA Civ 1297).

In s.42(1) of the Partnership Act 1890 the reference to the partnership assets (as divided on dissolution) is a reference to those assets net after payment of debts and liabilities of the partnership (*Sandhu v Gill* [2005] EWCA Civ 1297).

PARTNERSHIP CERTIFICATE. See *Amalgamated Society of Carpenters v Braithwaite*, 91 L.J. Ch. 688.

PARTY. “They that made a deed and they to whom it is made are called parties to the deed” (Termes de la Ley). So, the persons by and between whom an agreement is made are the parties to it. Cp. PRIVY.

As to when a person who is not a party to a deed can obtain the benefit of a covenant in the deed, see *Dyson v Forster* [1909] A.C. 98, cited ASSIGNS.

“Signed by the party to be charged therewith” (Statute of Frauds 1677 (c.3) ss.4, 17; Sale of Goods Act 1893 (c.71) s.4): “party” there is not to be construed party as to a deed, but person in general (Sug. V. & P. (14th edn), 129, citing 3 Atk. 503).

“Party” read “person” in *Barlow v Osborne*, 27 L.J. Ch. 308; 6 H.L. Cas. 556.

“Party” (R.S.C. Ord.24 r.7). A defendant, sued as an executor, who comes into the possession of documents in a private capacity, is nevertheless a “party” within the meaning of this rule for the purposes of discovery (*Buchanan-Michaelson v Rubinstein* [1965] Ch. 258).

“Party” (R.S.C. Ord.32 r.14(1)) refers to a party to the summons and not a party to the action (*Gawthrop v Boulton* [1978] 3 All E.R. 615).

The “party entitled to enforce the judgement” (R.S.C. Ord.42 r.32, now Ord.48 r.1) includes a person who is for the time being prevented by or under a statute from proceeding to execution. The phrase is a comprehensive one, covering not only a successful litigant but an assignee or the litigant’s legal personal representative or anybody claiming through him (*Brown v Stafford* [1944] K.B. 193).

“Parties . . . affected” (R.S.C. old Ord.58 r.3, now Ord.59 r.3) a wife respondent who has not appeared at the hearing of an undefended divorce petition is a “party directly affected” on whom notice of appeal should be served (*Gillooly v Gillooly* [1950] W.N. 524).

“Other party” to whom notice of appeal is to be given under Summary Jurisdiction Act 1879 (c.49) s.31(2), as substituted by Summary Jurisdiction (Appeals) Act 1933 (c.38) s.1, includes, in licensing appeals, the superintendent of police who serves the

notice of objection on the applicant (*Price v James* [1892] 2 Q.B. 428; *R. v Gloucestershire Justices*, 68 L.T. 225). See COURT OF SUMMARY JURISDICTION. Cp. OPPOSITE PARTY.

“Party to any legal proceedings” (Prison Rules 1964 (SI 1964/388) r.37A(1)). A Prisoner serving a long prison sentence whose solicitor lodges on his behalf a petition to the European Commission of Human Rights does not thereby become “a party to any legal proceedings” so as to entitle him to correspond privately with his legal adviser under this rule (*Guilfoyle v Home Office* [1981] Q.B. 309).

“Party” (County Courts Act 1934 (c.53) s.105). See *Re B. (An Infant)* [1958] 1 Q.B. 12, in which it was questioned whether a person on whom a notice was required to be served under s.2(4) of the Adoption Act 1950 (c.26), but on whom no such notice was in fact served, could be a “party” within the meaning of s.105.

“A party to a marriage” (Domestic Violence and Matrimonial Proceedings Act 1976 (c.50) s.2(1)). These words cannot be extended to cover parties whose marriage had been dissolved and were not living together (*White v White* [1983] 2 All E.R. 51).

“Party to the contract” (Furnished Houses (Rent Control) Act 1946 (c.34) s.2(1)) did not include the assignee of one of them (*R. v Tottenham and District Rent Tribunal, Ex p. Northfield (Highgate)* [1957] 1 Q.B. 103).

“Parties to the carrying on of the business” (Companies Act 1948 (c.38) s.332) are those who participate in, take part in or concur in the business of the company, involving something positive. Mere omission to give certain advice to the directors was not enough (*Re Maidstone Buildings Provision* [1971] 1 W.L.R. 1085).

“Party to the suit”: “Generally speaking, the Crown is not bound under the terms ‘party to the suit’” (per Alderson B., *Att-Gen v Donaldson*, 11 L.J. Ex. 340, citing *R. v Tuchin*, 2 Ld. Raym. 1066).

A next friend was not a “party to the suit”, and therefore was not within the proviso to Evidence Act 1843 (c.85) as a “party” “individually named in the record” (*Sinclair v Sinclair*, 14 L.J. Ex. 109). See PARTY.

Each individual trustee of a settlement is a “party to a settlement” within the meaning of the Income and Corporation Taxes Act 1970 (c.10) s.443, notwithstanding that he and his co-trustees might also together constitute a single “party” (*Cutner v IRC* (1974) 49 T.C. 429).

“Party to the action” (R.S.C. Ord.16 r.8(1)). Where, in an action for damages for negligent damage to cargo, the proceedings against the charterers, the second defendants, had been stayed it was held that, notwithstanding that the proceedings against them had been stayed, they remained a “party to the action” for the purposes of this rule (*Lister (RA) & Co v Thomson (EG) (Shipping) (No.2)* [1987] 1 W.L.R. 1614).

“Party to the proceedings” (R.S.C. Ord.15 r.12(3)). Represented parties in a representative action were not “party to the proceedings” within the meaning of this rule (*Ventouris v Mountain* (1990) 140 New L.J. 666).

(R.S.C. Ord.27 r.3.) Rule 3 required an admission to be made by a party to an action, but did not require that party to be a party to the action at the time the admission was made (*Ellis v Allen* [1914] 1 Ch. 904 followed) (*Standerwick v Royal Ordinance Plc* [1996] 8 C.L. 83).

A child, who was a beneficiary of litigation rather than a litigant was not a “party to proceedings” within the meaning of the Tribunals and Inquiries Act (c.53) s.11(1) (*S. (A Minor) v Special Educational Needs Tribunal* [1996] 1 W.L.R. 382; [1996] 1 All E.R. 171).

PARTY

“Proceedings involving . . . the same parties” (Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 art.21). “Parties” is not restricted to those domiciled in the contracting states (*Overseas Union Insurance v New Hampshire Insurance, The Times*, September 27, 1988).

(Supreme Court Act 1981 (c.54) s.51(6) and (7), as amended by Courts and Legal Services Act 1990 (c.41) s.4(1)). The term “party” was not an open-ended category and was limited to a person who had been served with notice of, or had intervened in, proceedings by virtue of rules of court or other statutory provision so that a person who elects to oppose an ex parte application for leave to move for judicial review was not a “party” within the meaning of ss.51(6) and (7) and 151 of the 1981 Act, and could not apply for a wasted costs order against an unsuccessful applicant’s legal representatives (*R. v Camden LBC, Ex p. Martin* [1997] 1 W.L.R. 359).

“Party” (Supreme Court Act 1981 (c.54) s.151). The fact that someone is served with a notice of a party’s intention to seek ancillary relief does not automatically make that person a “party” to the proceedings (*T. v T. (Financial Provision)* (1990) 1 F.L.R. 1).

(Tribunals and Enquiries Act 1992 (c.53) s.11.) A “party to proceedings” for the purposes of s.11 of the 1992 Act was a person who was properly before the tribunal according to the terms of any legislation prescribing who might be parties before that tribunal.

(Civil Jurisdiction and Judgments Act 1982 (c.27) art.21.) A mere licensee who happened to be working for a plaintiff could not be regarded as the same party as the plaintiff since it was a wholly different legal person and enterprise (*Mecklermedia Corp v DC Congress GmbH* [1998] 1 All E.R. 148).

Stat. Def., Leases Act 1845 (c.124) s.5; County Courts Act 1934 (c.53) s.191; Judicature Act 1925 (c.49) s.225; Supreme Court Act 1981 (c.54) s.151; County Courts Act 1984 (c.28) s.147.

“Party in possession”: see POSSESSION.

“Party to proceedings”: see PERSON BROUGHT BEFORE A COURT.

See ANY PARTY.

See PARTY CONCERNED; PARTY INTERESTED; PARTY TO THE SUIT; PERSON, and succeeding definitions; NECESSARY.

PARTY (TO AN AGREEMENT). “[Counsel’s] submission rested on two main pillars: the fact that the document does not describe the Government as a ‘party’ to the Agreement and a presumption, which he submitted was to be derived from the authorities, that the state does not by its signature of the document intend to undertake any obligation to the contracting parties. We have no doubt that in a case such as the present the state can, and often will, append its signature to the document in an administrative capacity merely to indicate its approval of its terms and without itself undertaking obligations of any kind to the contracting parties. However, we are equally confident that, if it chooses to do so, the state may become a full party to an agreement of a commercial nature made between a private party and one of its own state organisations or may incur obligations of a more limited kind to either or both of the parties, if it chooses to do so. In each case the question is whether it has undertaken any obligations, and if so, of what kind and to whom. For these reasons it is immaterial in our view to debate whether the Government ‘signed’ the Agreement or ‘became a party’ to it and what the distinction might be. These are simply forms of words. What matters is whether by putting its signature to the document with the attached

explanation of its purpose in so doing the Government incurred legally binding obligations towards Svenska." (*Svenska Petroleum Exploration AB v Lithuania* [2006] EWCA Civ at [26].)

See SAME PARTIES.

PARTY ABSOLUTELY ENTITLED. See ABSOLUTELY ENTITLED.

PARTY AGGRIEVED. See AGGRIEVED. See also *R. v Canadian Northern Railway* [1923] A.C. 714.

PARTY CONCERNED. A "party concerned" in an appeal against a boundary order under an Inclosure Act, meant a "person directly interested in the soil who, by the boundary being either in one direction or the other, would be entitled to more or less land", e.g. the lord of the manor, but not the commoners (per Bayley J., *R. v Lancashire Justices*, 1 B. & Ald. 637).

"Parties concerned" (Electricity (Supply) Act 1919 (c.100) s.22) included persons entitled to enforce restrictive covenants over land; such persons must have been given an opportunity to be heard before permission was given for the erection of electricity poles over land to which the covenants were attached (*National Trust v Midlands Electricity Board* [1952] 1 T.L.R. 74).

PARTY COSTS. Costs as between party and party are those taxable by a successful party against his antagonist: see COSTS.

PARTY OR PRIVY. Though a covenant that the covenantor has not done, permitted, or suffered, anything preventing him from conveying, is not broken by his having assented to what he could not prevent, yet if the words "or been party or privy to" were added, there would be a breach in such a case (*Hobson v Middleton*, 6 B. & C. 295). See also *Clifford v Hoare*, L.R. 9 C.P. 362; PERMIT.

"Fraudulent breach of trust to which the trustee was party or privy": see BREACH OF TRUST.

PARTY STRUCTURE. See *Major v Park Lane Co*, L.R. 2 Eq. 453, as to removal of a building, and its effect on a party structure.

Stat. Def., London Building Act 1930 (c. clviii) s.5; London Building Acts (Amendment) Act 1939 (c. xcvi) s.4.

PARTY WALL. "'Party-wall' may be used in four different senses—

"First: A wall of which the two adjoining owners are tenants in common (*Wiltshire v Sidford* 1 M. & R. 404; *Cubitt v Porter*, 8 B. & Co 257; *Stedman v Smith*, 26 L.J.Q.B. 314; *Standard Bank, British South Africa v Stokes*, 9 Ch. D. 68; *Watson v Gray*, 14 Ch. D. 192). This is the most common and primary meaning of the term (per Fry J., *Watson v Gray*, above)". The effect of the Law of Property Act 1925 (c.20), ss.1(6), 38(1), Sch.I, Pt V, para.1, which abolishes tenancy in common, is to substitute for this meaning a holding in which the wall is severed vertically, as in the second and fourth cases below, but the owners have rights corresponding to those held under the former law.

"Second: A wall divided longitudinally into two strips, one belonging to each of the neighbouring owners. In this case the owners are not tenants in common, even if the wall was erected at their joint expense (*Matts v Hawkins*, 5 Taunt. 20); but where there has been a common user of the wall erected at the common expense, that, in the absence of any other evidence, is sufficient evidence for a jury to find that the wall is held by the two parties as tenants in common (*Cubitt v Porter*, and *Standard Bank, British South Africa v Stokes*, above).

“Third: A wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenants. The term was so used in the Metropolitan Building Act 1855 (c.122), s.3, which enacted that, in that Act. “party-wall” shall apply to every wall used, or built in order to be used, as a separation of any building from any other building with a view to the same being occupied by different persons’ (*Knight v Purssell*, 11 Ch. D. 412; see also Metropolitan Buildings Act 1844 (c.84), s.2). Such a wall may be a party-wall for some part of its height, and above that height the separate property of one of the adjoining owners (*Weston v Arnold*, 8 Ch. 1084); and in the same way such a wall may be laterally a party wall for such distance as it is used by both owners and no further (*Knight v Purssell*, above).

“Fourth: A wall divided longitudinally into two moieties, each moiety being subject to a cross-easement in favour of the owner of the other moiety. This meaning is suggested in the note to *Wiltshire v Sidford*, above.

“The cases are collected in 5 Fisher Dig. 990 et seq.; and see Hunt on Boundaries (6th edn), Ch.6” (Elph. 606, 607).

A wall was not a “party wall” under the London Building Act 1894 (c. ccxiii) s.5(16) where it ceased to divide buildings and was not made so by s.75 of that Act (*Drury v Army and Navy Stores* [1896] 2 Q.B. 271). See *London, etc. Dairy Co v Morley and Lanceley* [1911] 2 K.B. 257. In these sections “party wall” was not used in a technical sense (per Wright J., *London Dairy Co*); semble, its meaning there was, partying wall, i.e. a wall which parts two buildings whether they belong to different owners or not. See hereon *Newton v Huggins*, 50 S.J. 617.

The effect of *Standard Bank, British South Africa v Stokes* (above), is “that, whatever may be at common law the rights of an adjoining owner in relation to a party structure, his rights, in relation to a structure within the district comprehended by the London Building Act 1894, depend now upon the Act. He has the rights which the Act gives him, and nothing else” (per Warrington J., *Lewis v Charing Cross E&H Railway* [1906] 1 Ch. 508; see also *Leadbitter v Marylebone* [1904] 2 K.B. 897, cited ADJOINING OWNER). See further *Adams v Marylebone* [1906] 2 K.B. 767, cited DIFFERENCE.

“Party-wall, or party structure, notice” by building owner (London Building Act 1894 s.90(1)): the notice had to be so clear that the adjoining owner might see what counter notice he must give under subss.(5), (6) (*Hobbs v Grover* [1899] 1 Ch. 11; see also *Leadbitter v Marylebone*, above, cited DIFFERENCE; BUILDING OWNER). The existence of such a notice (especially if followed by an award), was a material fact affecting the title of the adjoining owner receiving it, and which he was bound to disclose on the sale of his property (*Carlish v Salt* [1906] 1 Ch. 335); distinguished *Beyfus v Lodge* [1925] Ch. 350; see SILENCE. Cp. EXTERNAL WALL.

As to the usage to pay for a proportionate part of the value of a party wall when used by an adjoining owner as a wall for his own house, see *Robinson v Thompson*, 89 L.T. 137. As to implying a contract to that effect, see *Irving v Turnbull* [1900] 2 Q.B. 129. As to partition of party wall belonging to tenants in common, see *Mayfair Co v Johnston* [1894] 1 Ch. 508.

Staf. Def., and general provisions about and rights in relation to party walls and party fence walls, Party Wall etc. Act 1996 (c.40).

PASCUUM. See PASTURES.

PASS. “Every indorsee of a bill of lading to whom the property in the goods shall pass” (Bills of Lading Act 1855 (c.111) s.1): see *Sewell v Burdick*, 10 App. Cas. 74, applied in *Burgos v Nascimento*, 100 L.T. 71.

Banker’s pass book: see *Akrokerri Mines v Economic Bank* [1904] 2 K.B. 405, cited PAYMENT; *Re Farrow’s Bank* [1922] W.N., affirmed 282.

“Pass to the executor, as such” (Finance Act 1894 (c.30) s.9(1)): see *O’Grady v Wilmot* [1916] A.C. 231; see also AS SUCH; PASSING.

A declaration of trust by a settlor of the beneficial interest in property without a conveyance by him of the legal estate was held to be sufficient to “pass” his interest within Bankruptcy Act 1883 (c.42) s.47—see Bankruptcy Act 1914 (c.59) s.42: see *Shrager v March* [1908] A.C. 402.

(London CC (General Powers) Act 1947 (c. xlv) s.16(4).) Where a certain procedure was to be followed if a resolution, designating a street for trading, had “not been passed”, the procedure was not applicable if a resolution had been passed and then rescinded (*R. v Bermondsey BC, Ex p. Leonard* [1950] 1 All E.R. 1069).

“Sentence . . . passed” (Criminal Justice Act 1961 (c.39) s.3(1)). When a court makes an order bringing a previously imposed sentence into actual effect it does not thereby “pass” sentence within the meaning of this section (*R. v Lamb (Alan Peter)* [1968] 2 Q.B. 829).

A grant “to pass” over and along a right of way may be necessary implication include a right to halt and load and unload vehicles (*Bulstrode v Lambert* [1953] 1 W.L.R. 1064).

“Shall not pass a custodial sentence” (Criminal Justice Act 1991 (c.53) s.1(2)). Activating a suspended sentence was not passing a sentence for the purposes of this section (*R. v Crawford* (1994) 98 Cr.App.R. 297).

“Passes on the death”: see PASSING.

“Property passing”: see PASSING.

PASS AND REPASS. “Pass and repass”, in a local Turnpike Act, held to mean going and returning over the road once only (*Hill v Browning*, 22 L.T. 712).

PASSAGE. “Passage” is “the hire that a man pays for being transported over sea, or over any river” (Cowel), and that is its primary meaning (Jacob). See also *Albon v Dremsall*, Brownl. & Gold. 216. Cp. VOYAGE.

“Passagium, that is properly a ferry for the passage of men and cattle over a water, for which the owner has a toll” (*Webb’s Case*, 8 Rep. 46 b).

A way communicating with the backs of houses and used for obtaining access to privies and ash-pits, was a “passage” within the definition of “street” in Public Health Act 1875 (c.55) s.4 (*R. v Goole* [1891] 2 Q.B. 212, cited STREET).

“Passage” (Public Health Act 1936 (c.49) s.56(1)) does not include a path from the street to the front and back doors of a house (*Bursted Properties v Denton UDC* [1955] 1 W.L.R. 82).

“Court, passage, or otherwise” (Private Street Works Act 1892 (c.57) s.10): see *Newquay Urban DC v Rickeard* [1911] 2 K.B. 846. But see *Chatterton v Glanford Bridge Rural DC* [1915] 3 K.B. 707. See also *Oakley v Merthyr Tydvil Corp* [1922] 1 K.B. 409.

“Passage or place which now is, or hereafter may be, built upon or in building”, in a local Paving Act (c. xxv) s.3, did not include a bridge, forming part of a public highway, and which was built over a canal, and had walls four to five feet high on either side (*Arnell v Regent’s Canal Co*, 14 C.B. 564). See also BUILT UPON.

PASSAGE

“Passage” (Factories Act 1961 (c.34) s.28(1)). Although in the ordinary use of language a roadway 30 feet wide would not be considered a passage, for the purposes of this section it might be, if it is part of a factory normally used for persons to pass along on foot. The width of the road is irrelevant (*Thornton v Fisher Ludlow* [1968] 1 W.L.R. 655).

“Now on passage”: see NOW.

“Passage home”: see HOME.

Stat. Def., Civil Aviation Act 1949 (c.67) Sch.8.

See PUBLIC PASSAGE; PASSAGE BROKER; STEERAGE PASSAGE.

PASSAGE BROKER. In Merchant Shipping Act 1894 (c.60) ss.341, 342, “passage broker” means “any person who sells or lets, or agrees to sell or let or is otherwise concerned in the sale or letting, of steerage passages in any ship proceeding from the British Islands to any place out of Europe not within the Mediterranean Sea”; “the selling or letting there referred to means a selling or letting of a passage in a named ship to commence at a definite time for a specified voyage” (per Bruce J., *Morriss v Howden* [1897] 1 Q.B. 378).

PASSENGER. The wife and father-in-law of a captain of a vessel, who were on the vessel and being carried by it to a place to which they wished to go, but who were being so carried by the captain’s invitation without the knowledge of the owners; held, not “passengers” within Merchant Shipping Act 1854 (c.104) ss.354, 379 (see now Pilotage Act 1913 (c.31) s.11(2)) (*The Lion*, L.R. 2 P.C. 525). From the judgment of the Privy Council in that case it would seem that payment of a fare is not an absolutely necessary test of such a “passenger”; any one other (than the officers and crew) being carried by a ship, and towards whom the owners have, in respect of the voyage, any obligation or duty, would probably have been such a “passenger” (see also s.303). In the court below, Sir R. Phillimore said, “The payment of fare would appear to be a necessary incident for the constitution of a ‘passenger’, in the legal sense of the term, both as to his rights and duties” (L.R. 2 A. & E. 105—a proposition adopted in *Maude & P.* 277 fn., on the authority of *The Lion*, above, and *The Hanna*, L.R. 1 A. & E. 283). But in neither of those cases was so absolute a proposition needful. An ordinary payment of fare would, of course, be clear proof that a voyager was a passenger; but it is submitted that a voyager (other than the officers and crew) is a passenger; though he pay no fare, if the owners of the ship carry him in pursuance of an obligation or duty (judgment of PC, *The Lion*, above).

“Passengers” (Pilotage Act 1913 (c.31) s.11). Lorry drivers travelling free of charge on a “roll on/roll off” cargo ship are “passengers” within the meaning of this section and accordingly their presence may involve compulsory pilotage (*Clayton v Albertsen* [1972] 1 W.L.R. 1443).

On the other hand, a payment by a voyage of subsistence money to the master for which he latter is not accountable to the owners, would not of itself make the voyager a passenger within a proviso to an exemption from light dues (*Hay v Trinity House*, 65 L.J.Q.B. 90).

“Distressed seamen” (Merchant Shipping Act 1894 (c.60) s.191(1)) are not “passengers” within s.625 of that Act (*The Clymene* [1897] P. 295). See SEAMAN; DISTRESSED.

In Pt 3 s.267 (relating to passengers and emigrant ships) of the Merchant Shipping Act 1894 (c.60) (see now Merchant Shipping (Safety Convention) Act 1949 (c.43)

s.26), “passenger” includes “any person carried in a ship other than the master and crew, and the owner his family and servants”; that definition is confined to Pt 3 (per Barnes J., *The Clymene*, above).

Persons who join a sailing ship for an excursion and become, as intended, actively engaged in sailing the vessel do not thereby become “engaged . . . on the business of the ship” within the meaning of s.26(1) of the Merchant Shipping (Safety Convention) Act 1949 (c.43) and therefore remain “passengers” for the purposes of the Merchant Shipping Act 1894 (c.60) s.271 (*Secretary of State for Trade v Charles Booth* [1984] 1 W.L.R. 243).

The driver is not a “passenger” in a motor vehicle within a policy of insurance (*Digby v General Accident Fire & Life Assurance Corp* [1943] A.C. 121 at 133).

Children and babies in arms count as “passengers” for the purposes of the Public Health Acts (Amendment) Act 1907 (c.53) s.94 (*Weymouth Corporation v Cooke* (1973) 71 L.G.R. 458).

(Finance (No.2) Act 1940 (c.48) s.19(1).) An army wireless carrying truck was not “originally constructed or adapted solely or mainly for the carriage of passengers”, so that is conversion to a shooting brake attracted purchase tax (*T Coleborn & Sons v Blond* [1951] 1 K.B. 43).

(Town Police Causes Act 1847 (c.89) s.28.) Police officers who had been stationed in a public lavatory following complaints, and there witnessed a man masturbating, were not “passengers” within the meaning of this section (*Cheeseman v DPP* [1991] 2 W.L.R. 1105).

(Carriage by Air Acts (Application of Provisions) Order 1967 (SI 1967/480) Sch.1.) A policeman killed in a helicopter crash, which had been chartered by the police force for the purposes of surveillance work, was a passenger so that the helicopter operators were liable under the Warsaw Convention 1929 (*Herd v Clyde Helicopters* 1996 S.L.T. 976).

A person carried in a para-glider by an instructor was not a passenger within the meaning of the Carriage by Air Acts (Application of Provisions) Order 1967. The object of the flight was instruction and not carriage (*Disley v Levine* [2002] 1 W.L.R. 785, CA).

Stat. Def., Convention relating to the Carriage of Passengers and their Luggage by Sea art.1(4), reproduced in Sch.6 to Merchant Shipping Act 1995 (c.21).

Stat. Def., London Hackney Carriage Act 1843 (c.86) s.2; Carriage by Railway Act 1972 (c.33) Schedule art.1 para.1; Carriage of Passengers by Road Act 1974 (c.35) Schedule para.2; Merchant Shipping Act 1979 (c.39) Sch.3 art.1(4); Transport Act 1980 (c.33) s.63.

The purpose of a flight may be relevant for determining whether a person is a passenger for the purposes of Carriage by Air Acts (Application of Provisions) Order 1967; but the fact that a flight is recreational does not of itself prevent a person from being a passenger for those purposes (*Laroche v Spirit of Adventure* [2009] EWCA Civ 12).

See STEERAGE PASSENGER; ORDINARY PASSENGER; COMMON CARRIER.

PASSENGER AIRCRAFT. Stat. Def., Customs and Excise Act 1952 (c.44) s.152(5).

PASSENGER DECK. Stat. Def., Merchant Shipping Act 1894 (c.60) s.268.

PASSENGER IN TRANSIT. (Immigration Act 1971 (c.77) s.14.) A foreign citizen who was a member of a tour party in Europe was not a “passenger in transit” (*Low (Fui-Chun) v Secretary of State for the Home Department* [1995] Imm.A.R. 435).

PASSENGER’S LUGGAGE. See *Wilkinson v Lancashire & Yorkshire Railway* [1906] 2 K.B. 619; affirmed [1907] 2 K.B. 222; PERSONAL LUGGAGE.

PASSENGER’S RISK. See *Stewart v London & North Western Railway*, 33 L.J. Ex. 199. See OWNER’S RISK.

PASSENGER SHIP. “Passenger ship”, in Passengers Act 1855 (c.119) s.52, and Passengers Act Amendment Act 1863 (c.51) s.15, signified “every description of sea-going vessel carrying one or more passenger or passengers on any voyage from any place in Her Majesty’s Dominions to any place whatever” (Passengers Act Amendment Act 1889 (c.29) s.2); see hereon *Ellis v Pearce*, 27 L.J.M.C. 257.

See EMIGRANT; HOME-TRADE SHIP; PASSENGER STEAMER; SHIP.

PASSENGER STEAMER. A “passenger steamer”, within Merchant Shipping Act 1854 (c.104) ss.317, 318, must have been a “vessel used in navigation” within s.2 (*R. v Southport* [1893] 1 Q.B. 359). See SHIP; PLY.

PASSENGER TICKET. The words “passenger ticket” (Carriage by Air Act 1932 (c.36) Sch.I c.ii art.3(1)(c), (2)), applied to a ticket which was deficient in that it did not contain the names of the agreed stopping places, and therefore the limitation of liability contained in art.22 applied (*Preston v Hunting Air Transport* [1956] 1 Q.B. 454).

PASSENGER TRAIN. “A ‘passenger train’, prima facie, is a train advertised to take passengers generally—people travelling from place to place—upon the terms and in the manner ordinarily applicable to such passengers” (per Selborne C., *Burnett v Great North of Scotland Railway*, 10 App. Cas. 147). Accordingly, in that case (the defendant company having agreed that all their passenger trains should regularly stop at Crathes), it was held that Queen’s Messenger trains and Post Office trains, which ran only whilst the Queen was staying at Balmoral, but which were advertised in the company’s time-tables, and by which, to some extent, ordinary passengers could travel, were “passenger trains”, but (Lord Bramwell dissenting) that excursion trains were not.

PASSING. “The date of the ‘passing’” of an Act “are common English words, which have a fixed meaning in our language and law—they mean the time when the Royal Assent is given to a bill which has passed both Houses of Parliament” (per James L.J., *Ex p. Rashleigh, Re Dalzell*, 2 Ch. D. 9), and that it also the date of its commencement where it provides no other commencement (Acts of Parliament (Commencement) Act 1793 (c.13); Interpretation Act 1889 (c.63) s.36(1)). See hereon *Hall v London, Brighton & South Coast Railway*, 17 Q.B.D. 233; *Ings v London & South Western Railway*, L.R. 4 C.P. 20; *Wood v Hunt*, L.R. 4 C.P. 18, fn.2. But where there is a date named in the Act for it to come into operation, and a thing prohibited by it is completed before that date, then the phrase “after the passing” would seem to mean “after the Act shall come into operation” (*Wood v Riley*, L.R. 3 C.P. 26). But that reading was not adopted as to “after the passing of this Act” in s.10(1) of the Prevention of Crime Act 1908 (c.59), where the words were held to their literal meaning. See *R. v Smith* [1910] 1 K.B. 17.

Where an Act comes into operation on a stated day, it becomes law as soon as the clock begins to strike twelve on the previous night (*Tomlinson v Bullock*, 4 Q.B.D. 230; Interpretation Act 1978 (c.30) s.4).

Debt “contracted after the passing of” the Act: see CONTRACTED.

Powers to “cease after the passing of this Act”: see *Goldsmiths Co v West Metropolitan Railway* [1904] 1 K.B. 1, cited AFTER.

Premises not licensed “at the time of the passing of this Act”: see *Igoe v Shann* [1903] A.C. 320, cited LICENSED PREMISES.

Estate duty was by Finance Act 1894 (c.30) s.1, payable on property which really “passes on” death; by s.2, it was imposed on what should be “deemed” to be property so passing; if any “case falls within s.1, it cannot also come within s.2. The two sections are mutually exclusive” (per Lord Macnaghten, *Cowley v Inland Revenue Commissioners* [1899] A.C. 212); therefore, if it came within s.1, duty was payable only on the principal value of the property after deducting the mortgages and charges subject to which it passed (*Cowley* [1899] A.C. 198). Similarly where there was a s.2 situation but yet no charge to estate duty it was not open to the Revenue to apply s.1 (*Re Weir’s Settlement Trusts* [1971] Ch. 145). See also *Re Kirkwood* [1966] A.C. 520. But with the amendments made to ss.1 and 2 of the 1894 Act by the Finance Act 1969 (c.32), s.1 of the 1894 Act no longer has independent application as a charging section.

“Where property passes” on death (Finance Act 1894 (c.30) s.8(4)): see *Berry v Gaukroger* [1903] 2 Ch. 116; *Att-Gen v Howe* [1925] W.N. 79. On s.3, see *Att-Gen v Sandwick* [1922] 2 K.B. 500.

“Passing” (Thames Conservancy Act 1932 s.97(2)). For a discussion on the question of when vessels may be said to be “passing” one another see *Jones v Thomas*, 107 S.J. 272.

See PASS.

PASSING OFF. “Passing off” goods is when a trader by some device induces or endeavours to induce purchasers, or persons who may become purchasers, to believe that the goods offered for sale are of a kind, or quality, or from a source, or having a reputation, other than their own, e.g. by improperly using a trade mark or a trade name or its distinctive part (*Lecouturier v Rey* [1910] A.C. 262; *Standard Ideal Co v Standard Sanitary Manufacturing Co* [1911] A.C. 78, cited STANDARD; *Edge v Niccolls* [1911] 1 Ch. 5, cited GET UP; *Hunt v Ehrmann* [1910] 2 Ch. 198). Debars of remedy the owner of a trade mark or a trade name relating thereto (*Bile Beans Co v Davidson*, 23 Pat. Cas. 725).

If a business name similar to that of another trader has been adopted and acquired by reputation, bona fide and without any intention to deceive, the continued use of the name cannot be restrained, even though the similarity may occasionally lead to confusion (*Jays Ltd v Jacobi* [1933] Ch. 411).

In a passing off action it does not matter that the persons truly entitled to describe their goods by a particular name and description, e.g. “champagne”, are a class and not merely one individual (*Bollinger (J.) v Costa Brava Wine Co* [1959] 3 W.L.R. 966). See also *Reckitt & Coleman Products v Borden Inc* [1990] 1 All E.R. 873.

By mere use of title of work: see *Francis Day & Hunter Ltd v Twentieth Century Fox Corp Ltd* [1940] A.C. 112. “Their lordships do not wish to be taken to say that in no circumstances can there be a ‘passing-off’ by the use of the same title for a literary, artistic or musical work, though it is difficult to imagine such a case where there are no circumstances, other than the mere title, calculated to mislead. A title may, however, be used in the case of a book or newspaper under such conditions that persons may be deceived into buying the defendant’s book or newspaper under the impression that they are buying that of the plaintiff. Nor is such a claim limited to things sold, though

PASSPORT

it is commoner in that class of case. It is not impossible that there might be ‘passing-off’ of such a nature that persons might pay to go to a performance of the defendant’s work under the impression that they were going to witness the plaintiff’s work. But such cases are perhaps not very likely to occur . . .” (per Lord Maugham [1940] A.C. 125–126).

PASSPORT. “United Kingdom passport” (Immigration Act 1971 (c.77) s.3(9) as substituted by Immigration Act 1988 (c.14) s.3(1)). A British Visitors Passport is not a passport to which this section applies (*R. v Secretary of State for the Home Department, Ex p. Minto*, *The Times*, April 14, 1992).

Stat. Def., Prevention of Terrorism Act 2005 (c.2) s.15.

Stat. Def., Counter-Terrorism and Security Act 2015 Sch.1 reg.1(7).

PAST. “Past Act”: Stat. Def., Summary Jurisdiction Act 1879 (c.49) s.49.

“Any Act, whether past or future” (Summary Jurisdiction Act 1879 s.19) did not include that Act itself (*R. v London Justices* [1892] 1 Q.B. 664, on which see CONSENT, at end).

Past members of a company liable to the contributories (Companies Act 1862 (c.89) s.38—see Companies Act 1948 (c.38) s.212): see *Webb v Whiffin*, L.R. 5 H.L. 711; *Brett’s Case*, 6 Ch. 800; *Morris’ Case*, 7 Ch. 200.

PASTIME. See GAME.

PASTOR. See BISHOP.

PASTORAL. See AGRICULTURAL.

PASTURAGE. A right of “common pasturage and herbage” only authorises taking what can be taken by the mouth or bite of cattle, and not to cut or carry away any part of the growth of the soil (*De la Warr v Miles*, 17 Ch. D. 535). See COMMON.

“Right of pasturage usually enjoyed”: see *Musgrave v Inclosure Commissioners*, L.R. 9 Q.B. 162. See also HELD.

“Sole” is synonymous with “several” right of pasturage (*Hopkins v Robinson*, 2 Lev. 2). Cp. *North v Coe*, Vaugh. 258, cited SOLE.

As to obtaining the right of pasturage by long user, see *Neaverson v Peterborough*, 83 L.T. 496, reversed [1902] 1 Ch. 557.

Cp. HERBAGE.

PASTURE. A covenant in a lease of a farm not to plough or break up any of the meadow or pasture lands will, generally, only apply to those lands which were meadow or pasture at the date of the lease: see *Rush v Lucas* [1910] 1 Ch. 437; distinguished *Clarke-Jervoise v Scutt* [1920] Ch. 382. See also AGRICULTURAL; TILLAGE. Cp. MARKET GARDEN.

Stat. Def., Agricultural Holdings Act 1948 (c.63) s.94(1).

See COMMON; SUFFICIENT PASTURE.

PASTURES. “If a man doth grant all his pastures, *pasturas*, the land itselfe employed to the feeding of beasts doth passe, and also such pastures or feedings as he hath in another man’s soile. *Leswes* or *lesues* is a Saxon word, and signifieth pasture s.Between *pastura* and *pascuum*, the legall difference is that *pastura* in one signification containeth the ground itselfe called pasture. *Pascuum*, feeding, is wheresoever cattell are fed, of what nature soever the ground is” (Co. Litt. 4B; see hereon *Doe d. Kinglake v Beviss*, 7 C.B. 483, 484, 504; *Mogg v Yatton*, 6 Q.B.D. 10). Cp. GOING; HERBAGE; see MEADOWS.

"Pasture": "Pasture is a general name for herbage, acorns, mast, and nuts, and for leaves and flowers, and for all things comprised under the name of pannage" (Britton, 1. 2, Ch. 24, 1 Nichols' Ed. 371; see also Bracton, 1. 4, c.38, fo. 222; Fleta, 1. 4, c. 19; Cowel). See PANNAGE.

See COMMON.

PATENT. A right exclusively granted to the first inventor of an invention (see Patents Acts 1949–1977, Copyright, Designs and Patents Act 1988 (c.48)).

"No doubt a man may use the word 'patent' so as to deceive no one. It may be used so as to mean that which was a patent but is not so now. But if you suggest (i.e. untruly) that it is protected by an existing patent, you cannot obtain the protection of that representation as a trade-mark" (per Jessel M.R., *Cheavin v Walker*, 5 Ch. D. 862; see also per Lord Kingsdown, *Leather Cloth Co v American Leather Cloth Co*, 11 H.L. Cas. 543, 544). Cp. *Re Bass* [1902] 2 Ch. 579. And now, if a person sells an article with the word "patent" or "patented" or like phrase, on it, that is a representation that it is a patented article within Patents, etc. Act (see Patents Act 1949 (c.87) s.91(1)).

See PATENTEE; THREAT; ASSIGNMENT; LEGAL ASSIGNMENT; FOREIGN; NEW DESIGN.

PATENT AGENT. In and by Patents, etc. Act 1888 (c.57) s.1, "'patent agent' means exclusively an agent for obtaining patents in the United Kingdom"; he must be registered (see *Patent Agents Institute v Lockwood* [1894] A.C. 347). See now Patents Act 1949 (c.87) ss.88, 89, 101.

Under the Patents and Designs Act 1907 (c.29) s.84(1), it was held that an unregistered person did not commit the offence of describing himself as a patent agent by affixing to his premises the words "patent agency" and "patents, designs, and trade marks": see *Hans v Graham* [1914] 3 K.B. 400; see also *Graham v Tanner* [1913] 1 K.B. 17.

Stat. Def., Patents Act 1977 (c.37) ss.104, 130.

PATENT AMBIGUITY. "There are two kinds of ambiguity—

"First, where the ambiguity arises from the fact that the parties have expressed inconsistent intentions on the face of the deed. An ambiguity of this class is apparent to any person perusing the deed, even if he be unacquainted with the circumstances of the parties; and is called a 'patent ambiguity'.

"Second, where no ambiguity is apparent to a person perusing the deed until, on obtaining evidence of the circumstances of the parties, it is discovered that there are several persons or things, or classes of persons or things, to each of which a name or description contained in the deed seems to be equally applicable. An ambiguity of this class is called a 'latent ambiguity', or an 'equivocation'" (Elph., Ch.8; see Phipson on Evidence (9th edn), 635 et seq. for cases and observations in illustration).

PATENT DEFECT. "Patent defect" (Mines and Quarries Act 1954 (c.70) s.81(1)) means "observable" and not merely "observed" (*Sanderson v National Coal Board* [1961] 2 Q.B. 244). See DEFECT.

PATENT MEDICINE. See POISON. See Medicines Stamp Act 1812 (c.150), on which see *Farmer v Glyn-Jones* [1903] 2 K.B. 6, cited PROPRIETOR; *Smith v Mason* [1894] 2 Q.B. 363, cited ENTIRE and PUBLIC NOTICE; *Att-Gen v Lamplough*, 3 Ex. D 214, cited WATERS.

PATENT NAME. See *Bristol Tramways Co v Fiat Motors* [1910] 2 K.B. 381, cited TRADE NAME; *Morelli v Fitch* 140 L.T. 21.

PATENTEE. “Patentee means the person or persons for the time being entered on the Register of Patents as grantee or proprietor of the patent”.

Stat. Def., Patents Act 1949 (c.87) s.101(1).

PATERNA. “Ex parte paternâ”: see NEXT-OF-KIN.

PATERNITY. See *Re R. (a child)* [2005] UKHL 33.

PATHOGEN. See the list of pathogens and toxins in Sch.5 to the Anti-terrorism, Crime and Security Act 2001 (c.24).

Stat. Def., “an organism that causes or contributes to the development of a disease” (Aquaculture and Fisheries (Scotland) Act 2013 s.63).

PATIENT. “Patients of the practice”, in a covenant restraining a doctor from practising her profession, was held to be void for uncertainty (*Jenkins v Reid* [1948] 1 All E.R. 471).

“At a hospital as a patient” (Road Traffic Act 1972 (c.20) s.9 as substituted by Sch.8 to the Transport Act 1981 (c.56)). A motorist who, after an accident, was taken to hospital where he was X-rayed and then discharged, was not still a “patient” at the hospital when requested to provide a breath test in the hospital car park, notwithstanding that he had not yet left the hospital precincts (*Askew v DPP* [1988] R.T.R. 303).

“Any such patient” (Mental Health Act 1983 (c.20) s.73(2)). A patient who was the subject of a restriction order under s.41 but was found by a mental health review tribunal not to be suffering from a mental illness nevertheless remained a “patient” for the purposes of this section until such time as he was absolutely discharged (*R. v Merseyside Mental Health Review Tribunal, Ex p. K* [1990] 1 All E.R. 694).

For the meaning of “patient” in the context of rules of court see *Masterman-Lister v Brutton & Co* [2003] 3 All E.R. 162, CA.

Stat. Def., Inebriates Act 1898 (c.60) s.27; National Health Service Act 1977 (c.49) s.128; Mental Health Act 1983 (c.20) ss.94, 142, 145; Registered Homes Act 1984 (c.23) s.36.

“28. The question whether or not someone is ‘a patient’ is prosaic rather than sophisticated. It does not turn on fine definitions. The answer depends on the factual evidence, i.e. how the actors said to be in a ‘clinician-patient’ relationship conducted themselves and the view taken by the fact-finding tribunal of the documentary and witness evidence as a whole.

29. There is no suggestion that the HCPC Panel convened in the present case (see above) was inexperienced or not perfectly well able to recognise a ‘clinician-patient’ relationship when they saw one. The definition test of ‘a patient’ proffered by Mr Garnham QC, namely ‘a person receiving clinical treatment’, merely states the obvious. There was no need for the Panel to state the obvious. Their task was to spot the elephant rather than spend time trying to describe it.” (*Levett v The Health And Care Professions Council (“The HCPC”)* [2014] EWHC 994 (Admin).)

“Patients’ expenses”: see EXPENSES.

See AGENT AND PATIENT; UNDUE INFLUENCE.

PATRIAL. Stat. Def., Immigration Act 1971 (c.77) s.2(6).

PATRIMONY. “Patrimony” is not necessarily restricted to property derived directly from a father (*Green v Giles*, 5 I. Ch. R. 25).

PATRIOTIC PURPOSES. For the meaning of the phrase “patriotic purposes or objects”, as used in a will, see *Att-Gen v National Provincial Bank* [1924] A.C. 262; *Re Tetley*, 93 L.J. Ch. 231.

PATRON. "Is hee that hath the advowson of a parsonage, vicarage, free-chappell, or such like spirituall promotion" (Termes de la Ley).

An advowson is an incorporeal hereditament (2 Bl. Com. 21), giving its owners, as his chief right, the right of presentation or collation to a church, but it "does not consist solely of that right and confers other rights, e.g. the right to restrain WASTE, and the like"; therefore, where an advowson is settled to the use of an infant tenant in tail, and the trustees are to present during his infancy, the trustees are not the "patrons" of the living (per Swinfen Eady J., *Leigh v Leigh* [1902] 1 Ch. 400).

Stat. Def., Ecclesiastical Dilapidations Act 1871 (c.43) s.3; Benefices (Purchase of Rights of Patronage) Measure 1933 (No.1) s.1(11); Reorganisation Areas Measure 1944 (No.1) s.53; Incumbents (Discipline) Measure 1947 (No.1) s.1(5); Pastoral Reorganisation Measure 1949 (No.3) s.19; Benefices (Suspension of Presentation) Measure 1953 (No.5) s.7.

See PRIVATE PATRON.

PATRONAGE. Stat. Def., Bishops Resignation Act 1869 (c.111) s.14.

PATTERN. Where novelty of design registered for "pattern" is in question, "pattern" includes shape and ornamentation, in which accordingly novelty or originality may be found as distinguished from pattern (*Re Rollason* [1898] 1 Ch. 237; Williams L.J. dissenting, affirmed in House of Lords, sub nom. *Heath v Rollason* [1898] A.C. 499, cited DESIGN). See also *Saunders v Weil* [1893] 1 Q.B. 470. Cp. CHART.

PAUPER. "Pauper removed", in Divided Parishes and Poor Law Amendment Act 1876 (c.61) s.36, meant a person who was a pauper at the time of the passing of the Act and had been removed (*Brighton v Strand* [1891] 2 Q.B. 156).

PAVE. Semble, a wood pavement would not have satisfied the word "paved" as used in Public Health Act 1875 (c.55) s.152 (*Att-Gen v Bidder*, 47 J.P. 263).

As to what "pave" included in Public Health Act 1875 s.15, or Metropolis Management Act 1855 (c.120) s.105, see *Robertson v Bristol* [1900] 2 Q.B. 198; *Wandsworth v Golds*, 80 L.J.K.B. 126.

Stat. Def., Metropolis Management Act 1862 (c.102) s.112; Metropolis Management Act 1890 (c.54) s.4.

See FLAG; PAVEMENT; see also SATISFACTION.

PAVEMENT. A "pavement" is probably a paved footway (Turnpike Roads Act 1822 (c.126) s.112, on which see *R. v Manchester*, 2 L.T. 280).

A footway made up with gravel and kerbed, though not paved with stone or flagged, was a "pavement" within Metropolis Management Act 1855 (c.120) s.78 (*St. John's, Hampstead v Hoopel*, 15 Q.B.D. 652). See hereon per Tenterden C.J., *Loveridge v Hodsoll*, 2 B. & Ad. 608, 609.

Cp. PAVE; FLAG; See FOOTPATH; FRONTING; SOIL.

PAWN. See Pawnbrokers Act 1872 (c.93) s.5, on which see *R. v Inland Revenue Commissioners* [1907] 1 K.B. 108, cited SUCCESSORS; *Newman v Oughton* [1911] 1 K.B. 792, cited MONEYLENDER.

PAWNAGE. Pawnage is the agistment (see AGIST) of the mast of trees, or the profit that is made of the same (Manwood 90, cited *Shrewsburies Case*, 1 Bulst. 7). Cp. PANNAGE.

PAY. "To pay money" is not to pay over any particular coins but, to satisfy the amount by payment (per Esher M.R., *Re Miller* [1893] 1 Q.B. 327). But see *Henderson v Arthur* [1907] 1 K.B. 10, cited PAYMENT.

In Trustee Act 1925 (c.19) s.68(8), “‘pay’ and ‘payment’ as applied in relation to stocks and securities and in connection with the expression ‘into court’, include the deposit or transfer of the same in or into court”.

A direction “to pay and divide” will not postpone the vesting of a gift (*Re Pickworth*, 68 L.J. Ch. 328, cited EITHER); sometimes, when aided by a context, these words will work a vesting (*Pearman v Pearman*, 33 Bea. 394). Such a direction may imply a power, but not a trust, for sale (per North J., *Re Wintle*, 65 L.J. Ch. 868; explaining *Mower v Orr*, 18 L.J. Ch. 361).

“Pay over”: see *Buchanan v Angus*, 4 Macq. 374.

“To pay as may be paid thereon”, in a marine re-insurance, does not bind the re-insurer to pay what the insurer has paid unless the latter shows that he was liable to pay it (*Chippendale v Holt*, 65 L.J.Q.B. 104; *Martin v Steamship Owners Underwriting Association*, 71 L.J.K.B. 721; *Western Assurance v Poole* [1903] 1 K.B. 376); but actual payment is not a condition precedent (*Re Eddystone Insurance* [1892] 2 Ch. 423). Such a re-insurance is not a contract of indemnity, and a reinsurer cannot be brought in as a third party in an action against the original insurer (*Nelson v Empress Assurance* [1905] 2 K.B. 281). See also ORIGINAL POLICY.

The daily allowances (for lodgings, rations, fuel, light, etc.) of an officer in the Army are not pay. But command pay payable to officers in actual command of depots, of camps of instruction, of regiments, is “pay”, and therefore income tax is payable on it: see *Bayley v Bayley* [1922] 2 K.B. 227.

A direction to “pay all duties payable on my death under the terms of this my will” referred to duties payable solely under the terms of the will, and did not refer to duties payable on the deaths of appointees for life of a settled fund (*Re Edwards* [1946] 2 All E.R. 408).

A cheque drawn “pay cash or order” is not a bill of exchange and does not require indorsement (*North and South Insurance Co Ltd v National Provincial Bank Ltd* [1936] 1 K.B. 328). See also *Cole v Milsom* [1951] 1 All E.R. 311.

An entitlement to benefits under an occupational pension scheme was “pay” for the purposes of art.119 EEC Treaty (*Bilka-Kaufhaus GmbH v Weber von Hartz* (No.170/84) [1987] I.C.R. 110). But a state pension was not (*Roberts v Birds Eye Walls* [1991] I.C.R. 43). In this context “pay” should be given a wide meaning and would include a redundancy payment made under a contractual redundancy scheme (*Hammersmith and Queen Charlotte’s Special Health Authority v Cato* [1988] 1 W.L.R. 132; *Barber v Guardian Royal Exchange Assurance Group* [1990] 2 All E.R. 660; *McKechnie v UBM Building Supplies (Southern)* [1991] I.R.L.R. 283). But neither a statutory redundancy payment, nor a statutory payment made by the Secretary of State out of the redundancy fund under s.106 of the Employment Protection (Consolidation) Act 1978 (c.44), were “pay” for the purposes of art.119 (*Secretary of State for Employment v Levy* [1989] I.R.L.R. 469). Pension payments made under a contracted-out private scheme are “pay” whereas payments made under a statutory social security scheme are not (*Griffin v London Pension Fund Authority* [1993] I.R.L.R. 248).

“Pay” (EEC Treaty art.119) does not include unemployment benefit (*Social Security Decision No.R(U) 10/88*).

Compensation for unfair dismissal was “pay” under the EEC Treaty art.119 (*Mediguard Services v Thame* [1994] I.R.L.R. 504).

Sums payable by an employer to an employee for failing to give notice to which the employer was entitled were “pay” even though the payments were made after the termination of the employment relationship and made by a person other than the employer for the purposes of art.119 of the EEC Treaty (*Clark v Secretary of State for Employment* [1995] I.C.R. 673).

(Employment Protection (Consolidation) Act 1978 (c.44) ss.54, 64, Sch.13 paras 4, 5; EC Treaty art.119.) Compensation for unfair dismissal constituted “pay” under art.119 of the EC Treaty (*Warren v Wylie and Wylie* [1994] I.R.L.R. 316 and *Methilhill Bowling Club v Hunter* [1995] I.R.L.R. 232).

A protective award was “pay” for the purposes of Dir.80/987 under the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) ss.189(3) and 190(5).

The concept of pay, within the meaning of the second paragraph of art.119 of the EC Treaty, covered all forms of consideration, in cash or in kind, whether present or future, provided that the worker received it, even indirectly, as a result of his employment relationship with his employer. Family and marriage allowances thus fell within that concept (*EC Commission v Greece* [2000] 1 C.M.L.R. 465, ECJ).

A Christmas bonus constituted pay within the meaning of art.141 of the EC Treaty regardless of whether it was a contractual entitlement or a voluntary payment, even if paid mainly or exclusively as an incentive for future work or loyalty (*Susanne Lewen v Lothar Denda* [2000] 2 C.M.L.R. 38, ECJ).

Pension rights fall within the definition of “pay” in art.141(1) of the EC Treaty (*Trustees of Uppingham School Retirement Benefits Scheme for Non-Teaching Staff v Shillcock* [2002] 2 C.M.L.R. 39, Ch).

For the purposes of art.119 of the EC Treaty (equal pay) whether or not a pension amounts to pay depends not on whether it is paid by the State or a private person but on whether it is paid only by reason of the employment relationship between the pensioner and the former employer (*Griesmar v Ministre de L'Economie* [2003] 3 C.M.L.R. 5, ECJ; see also *Allonby v Accrington & Rossendale College* [2004] 1 C.M.L.R. 35, ECJ).

A system for calculating termination payments may fall within the concept of “pay” (*Osterreichischer Gewerkschaftsbund* [2004] 3 C.M.L.R. 37).

A bridging allowance provided for by a collective agreement to alleviate consequences of a company restructuring was pay (*Hlozek v Roche Austria Gesellschaft* (Case C-19/02) [2005] 1 C.M.L.R. 28, ECJ).

A tax concession not paid by the employer is not pay for the purposes of art.141 of the EC Treaty (*Vergani v Agnezia Delle Entrate* (Case C-207/04) [2006] 1 C.M.L.R. 5, ECJ).

Sick pay can be pay for the purposes of EC Treaty art.141 (*North Western Health Board v McKenna* (Case C-191/03) [2006] 1 C.M.L.R. 6, ECJ).

For the purposes of Directive 2000/78 on equal treatment, “pay” means “the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer... the fact that certain benefits are paid after the termination of the employment relationship does not prevent them from being ‘pay’ within the meaning of Article 141 EC.” Survivors’ benefits could therefore be included in the term (*Maruko v Versorgungsanstalt der Deutschen Bühnen* (Case C-267/06) [2008] 2 CMLR 32).

See ORDER TO PAY.

“Pay into court”: see Trustee Act 1925 (c.19) s.68.

“Provide and pay for”: see PROVIDE.

See PAID; ADVANCE; REMUNERATION; RETIRED PAY.

PAY TO. See APPLY.

PAYABLE. Where there is a gift to a remainderman on attaining 21 or marrying, but to go over in case of his death before his share becomes “payable”, this word will generally be read as “vested” (*Emperor v Rolfe*, 1 Ves. Sen. 208; see thereon *Walker v Main*, 1 Jac. & W. 1; *Mendham v Williams*, L.R. 2 Eq. 399; *Day v Radcliffe*, 3 Ch. D. 657). See also *Hallifax v Wilson*, 16 Ves. 168; *Mocatta v Lindo*, 9 Sim. 56; *Haydon v Rose*, L.R. 10 Eq. 224. See hereon *Leader v Duffy*, 13 App. Cas. 294, on which see *Duffield v M'Master* [1906] 1 I.R. 343, 345, 354, 355, 358, 361; *Fairgrieve v Stirling*, 34 S.L.R. 80. Cp. DIE; THEN LIVING.

It frequently happens that “a money fund is given to a person for life, and after his decease, to his children at majority or marriage, with a gift over in the event of any of the objects dying before their shares become payable. In such cases it becomes a question whether the word ‘payable’ is to be considered (i) as referring to the age or marriage (or any other such circumstance affecting the personal situation of the legatee), on the arrival or happening of which the shares are made ‘payable’, or (ii) to the actual period of distribution; in other words, whether the shares vest absolutely at the majority or marriage of the legatees—in the lifetime of the legatee for life; or whether the vesting is postponed to the period of such majority or marriage, and the death of the legatee for life. As the latter construction exposes the legatees to the risk of losing the testator’s provision in the event of their dying in the lifetime of the legatee for life—although they may have reached adult or even advanced age and may have left numerous descendants—the courts have strongly inclined to hold the word ‘payable’ to refer to the majority or marriage of the legatees, especially if the testator stood towards the legatees in the parental relation.

“And where (as often happens) the question has arisen under marriage settlements, the leaning to this construction is strongly aided by the occasion and design of the instrument, whose primary object obviously is to secure a provision for the issue of the marriage. In wills, the point, like all others, depends solely upon the intention to be collected from the context” (3 Jarm. (8th edn), 2034 et seq., which see for cases illustrating and qualifying these propositions; see also *Wakefield v Maffet*, 10 App. Cas. 422; *Partridge v Baylis* [1881] W.N. 81).

“It is presumed that if upon the true construction of the will ‘payable’ applies to the age or marriage of the legatee, the construction will not be varied by the accident of the legatee for life dying before the majority or marriage of the legatee in remainder; but that the interest of the latter will remain liable to defeasance during minority or until marriage. But if no time is specified—(or, can be collected as specified?)—for payment, the word ‘payable’ in the gift over will be held to refer to the death of the tenant for life, and the legatee in remainder must survive him in order to take. If an immediate legacy is given without specifying a time for payment, and is given over in case the legatee dies before it becomes payable the word ‘payable’ can only have reference to the death of the testator. And even where a legacy (whether immediate or after a prior life estate) is directed to be paid at a particular age, and is given over in case the legatee dies before it becomes ‘payable’, the gift over takes effect if the legatee dies before the testator, although he may have attained the age” (3 Jarm. (8th edn), 2041). Cp. VESTED.

"A portion is not properly said to be 'payable' by trustees until two things have occurred, i.e. when the time appointed for raising it has arrived, and the person entitled is able to give a discharge for it; but a portion is often said to be 'payable' to a child so soon as the event has happened which gives the child a vested interest in it, and, in the latter case, the word 'payable' denotes only that the child is entitled or enabled to receive such share or portion" (per Westbury C., *Massy v Lloyd*, 10 H.L. Cas. 268).

The assertion by trustees of their right to impound the income of the tenant for life in order to make good to the trust money paid to him in breach of trust made his income "payable to some other person" so as to determine his interest (*Re Balfour's Settlement* [1938] Ch. 928).

Where under a settlement the income was payable to a beneficiary until she should become bankrupt or assign or charge the income or any part thereof, or until some other act or event should happen whereby the income or any part thereof if belonging absolutely to her would become vested in or payable to or charged in favour of any other person, the interest was held to determine on the appointment of sequestrators of the estate of the beneficiary. The clause was held to point to a determination on the happening of any event whereby the beneficiary should be deprived of the personal enjoyment of the income (*Re Baring's Settlement Trusts* [1940] Ch. 737).

An order under s.57 of the Trustee Act 1925 (c.19), directing that a policy effected by a tenant for life, to whom capital money had been advanced, should be assigned by him to the trustees who should pay the premiums out of the income of the settled property if the tenant for life did not do so, did not make the income "payable to any other person" for the purposes of a clause creating a determinable life interest (*Re Salting* [1932] 2 Ch. 57). See also PROTECTIVE TRUSTS.

"Due and payable": see *Re Willmott*, L.R. 7 Eq. 532. See MONEY PAYABLE. See also *Re McGreavy* [1950] Ch. 269, cited DEBT, para.(11).

Income tax deductible "at such times in each year as the said sums shall be payable" (Income Tax Act 1842 (c.35) s.158): see *Shrewsbury v Shrewsbury*, 22 T.L.R. 598.

A partner's share in the income of the partnership was "income payable to" him within s.18(1) of the Finance Act 1936 (c.34), although technically it was not a debt of the partnership (*Latilla v Inland Revenue Commissioners* [1943] A.C. 377). See also *Vestey's Executors v Inland Revenue Commissioners* [1949] 1 All E.R. 1108. See Income Tax Act 1952 (c.10) s.412.

"Payable" (Finance Act 1952 (c.33) s.68(1)). Profits tax was "payable" when it was assessed, notwithstanding that it might thereafter cease to be payable if an election was made under s.31(3) of the Finance Act 1947 (c.35) (*Income Tax Special Commissioners v Linsleys* [1958] A.C. 569).

"Outgoing payable in respect of" is, semble, a larger phrase, in a lessee's covenant for payment, than "outgoing charged upon" the demised premises (*Surtees v Woodhouse* [1903] 1 K.B. 396, cited OUTGOING).

An acknowledgment of arrears of rent or interest so charged or payable, "by the person by whom the same was payable", has to be made, not so much by the person compellable to pay, but by the person whose property or right to property would be affected if such arrears are payable and which arrears would not be payable without an acknowledgment, e.g. an acknowledgment by a mortgagor does not prejudice a puisne mortgagee, nor, as to realty devised in trust, does an acknowledgment avail which is not signed by all the trustees (*Bolding v Lane*, 32 L.J. Ch. 219, and *Astbury v Astbury* [1898] 2 Ch. 111, cited ACKNOWLEDGMENT. See hereon 42 S.J. 738, 739).

PAYABLE

“Payable by way of rent” (Leasehold Reform Act 1967 (c.88) s.9(5)) means rent the tenant is under an enforceable obligation to pay, and excludes arrears which have become statute barred (*Re Howell's Application* [1972] Ch. 509).

As to the contextual effect of “payable”, see *Tennant v Smith* [1892] A.C. 150, cited PERQUISITE.

“Would be payable” (Trading with the Enemy (Custodian) Order 1939 (SI 1939/1198) art.1(i)) meant “would be payable at the date of the Order or would thereafter become payable and would continue to be payable” (*Fraenkel v Whitty* [1947] 2 All E.R. 646).

“Would become payable” to any other person, in a forfeiture clause: see WOULD. See also CHARGE OR INCUMBER; ALIENATION; *Re Tancred* [1903] 1 Ch. 724, cited DISPOSE OF.

“No remuneration was payable” (Employment Protection (Consolidation) Act 1978 (c.44) Sch.14 para.6(3)). Where an employee agreed to work for whatever the company could afford to pay him it was held that no remuneration was “payable”, within the meaning of this paragraph, during those weeks when, as a result of this arrangement, he received nothing at all (*Secretary of State for Employment v Crane* [1988] I.R.L.R. 238).

“Payable” (Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 (SI 1983/1598) reg.7(1)(k)(iii)) means “due and owing” rather than “has been or will be paid”. Thus compensation for unfair dismissal was “payable” for the purposes of this regulation notwithstanding that the claimant was highly unlikely to receive the sums due from her former insolvent employer (*Morton v Chief Adjudication Officer* [1988] I.R.L.R. 444).

A sum was “payable” within the meaning of the Powers of Criminal Courts Act 1973 (c.62) s.35(3)(b)(ii) when it was due for payment and also when it would fall due to be paid in the future (*DPP v Scott (Thomas)* [1995] R.T.R. 40).

“Payable” (s.35(3)(b)(ii) of the Powers of Criminal Courts Act 1973 (c.62)) can refer to compensation which might become payable at a future date, so that the power of magistrates to award compensation is limited to £175 since the other loss is payable by the Motor Insurers Bureau (*DPP v Scott (Thomas)* [1995] R.T.R. 40).

“As a matter of ordinary language, ‘payable’ clearly means now due and owing, for immediate payment and not only payable if and when some suspensive condition for which Mr Tselentis contends is satisfied. Quite apart from the ordinary meaning of language, when the agreement is considered as a whole, the word ‘payable’ in s.2(c) clearly means that there is a current enforceable obligation to pay. This is clear from the fact that, having talked about ‘amounts which would otherwise be payable’, the provision goes on to talk about ‘each party’s obligation to make payment’ being ‘automatically satisfied and discharged’ by payment of the balance after netting. However, where Pioneer is affected by an Event of Default, as a consequence of s.2(a)(iii), Marine Trade has no obligation to make payment to Pioneer at all. That ‘payable’ connotes an immediately enforceable obligation to pay is also clear from the definition of ‘Unpaid Amounts’ for the purposes of the calculation of the payment due on Early Termination. This refers to such unpaid amounts being ‘the amounts that became payable (or that would have become payable but for s.2(a)(iii))’ which demonstrates that the effect of non-compliance with the conditions precedent in s.2(a)(iii) is that the amounts have not become payable. That is only consistent with ‘payable’ meaning immediately due for payment and wholly inconsistent with Mr

Tselentis' construction of 'payable' as somehow covering a situation where the payment obligation has been suspended. Mr Tselentis accepted that if his construction of 'payable' was wrong (which I do consider it to be), his argument on Issue 2 could not run." (*Marine Trade SA v Pioneer Freight Futures Co Ltd BVI* [2009] EWHC 2656 (Comm).)

"Payable in the United Kingdom": see INTEREST PAYABLE IN THE UNITED KINGDOM.

See OWING; RECEIVED; TO BE PAID; PARTY LIABLE; PAYMENT; RENT PAYABLE.

PAYEE. A payee means, ordinarily, a person to whom payment is made, but in the phrase "purchaser, payee, or incumbrancer", at end of Bankruptcy Act 1869 (c.71) s.92, it meant "person receiving payment as a creditor" (per Cairns C., *Butcher v Stead*, L.R. 7 H.L. 839). In the corresponding section, s.48(2) of the Bankruptcy Act 1883 (c.52)—see Bankruptcy Act 1914 (c.59) s.44—this phrase is varied to "any person making title through or under a creditor of the bankrupt".

A "payee", e.g. of a bill of exchange, or promissory note, is the person to whom the money is, or will become, payable: see HOLDER; ACCOUNT OF PAYEE.

Stat. Def., Maintenance Orders (Reciprocal Enforcement) Act 1972 (c.18) s.21.

PAYING. The usual preface in a lessor's covenant for quiet enjoyment, namely the lessee "paying the rent hereby reserved and performing the covenants on his part herein contained", does not make such payment or performance a condition precedent to the performance by the lessor of his covenant (*Hays v Bickerstaffe*, 2 Mod. 34; *Dawson v Dyer*, 5 B. & Ad. 584; *Edge v Boileau*, 55 L.J.Q.B. 90; see Woodf. (24th edn), 627, 628). In his successful argument in *Hays v Bickerstaffe*, Pemberton Serjt., said, "The words 'paying and yielding' make no condition, nor was it ever known that for such words the lessor entered for non-payment of rent; and there is no difference between these words and 'paying and performing', *Bennet's Case* in B.R.; *Duncomb's Case*, Owen, 54". In a previous part of his argument he admitted that "the word 'paying', in some cases, may amount to a condition; but that is where, without such construction, the party could have no remedy".

Semble, a testamentary gift of leaseholds, the donee "paying" the ground rent and performing the lessee's covenants and conditions, imposes a personal obligation on the donee if and when he accepts the gift: see *Re Loom*, 54 S.J. 583.

"Paying freight and all other conditions as per charter-party", or "paying for the said goods as per charter-party", in a bill of lading, will not make the consignee liable for demurrage at the port of loading over which he has no control (*Smith v Sieveking*, 24 L.J.Q.B. 257; *County of Lancaster SS v Sharpe*, 24 Q.B.D. 158); *secus* of, "for demurrage accruing from his own delay in the port of discharge" (per Jervis C.J., *Smith v Sieveking*, 5 E. & B. 591, referring to *Jesson v Solly*, 4 Taunt. 52, and *Wegener v Smith*, 15 C.B. 285). If it is shown that any part of the goods has been received under the bill of lading, that is evidence that the consignee undertook to pay for demurrage even at the port of loading (*Wegener v Smith*, above; per Mathew J., *County of Lancaster SS v Sharpe*, above); but such evidence is not conclusive and may be rebutted by a repudiation of the claim before accepting delivery, especially when the shipowner knows that the consignee is only an agent (*County of Lancaster S.S. v Sharpe*, above). See also *East Yorkshire S.S. Co v Hancock*, 5 Com. Cas. 266. See HE OR THEY PAYING FREIGHT; ON PAYMENT; SANS RECOURS.

"Paying a DIVIDEND": see STOCKS.

See YIELDING AND PAYING.

PAYMENT

PAYMENT. A “payment ought to be reall, and not in shew or appearance” (Co. Litt. 209B).

Payment, necessarily, implies two distinct persons; a man cannot make a payment to himself (*Faulkner v Lowe*, 2 Ex. 595; see also per Bowen L.J., *Re Hoyle* [1893] 1 Ch. 84). See hereon *Union Bank of London v Ingram*, 16 Ch. D. 53, and *Bright v Campbell*, 41 Ch. D. 388, cited IN ARREAR.

“‘Payment’ is not a technical word; it has been imported into law proceedings from the exchange and not from law treatises. It does not necessarily mean payment in satisfaction and discharge, but may be used in a popular sense” (Dwar. 675, citing *Maillard v Argyle*, 6 M. & G. 40, adopted in *Turney v Dodwell*, 23 L.J.Q.B. 139; see also FOR).

“The word ‘payment’ in itself is one which . . . may cover many ways of discharging obligations. It may even . . . include a discharge, not by money payment at all, but by what is called ‘payment in kind’” (per Lord Evershed in *White v Elmdene Estates* [1959] 3 W.L.R. 185, confirmed [1960] A.C. 528).

A cheque or bill, if duly honoured, is payment as from the time of its being given (*Belshaw v Bush*, 11 C.B. 191; per Cockburn C.J., *Bridges v Garrett*, L.R. 5 C.P. 451; *Currie v Misa*, L.R. 10 Ex. 153; per Lord Blackburn, *McLean v Clydesdale*, 9 App. Cas. 95; see hereon *Re Farrows Bank Ltd* [1923] 1 Ch. 41; *Hadley v Hadley* [1898] 2 Ch. 680). See also *Mears v Western Canada Pulp Co* [1905] 2 Ch. 353, cited PAID; *Macdougall v M’Nab*, 31 S.L.R. 111. See also *Marreco v Richardson* [1908] 2 Ch. 584. Therefore, an agreement for the sale of a business with all its “debts due” and the “benefit of all securities for such debts”, does not pass any debt for which a cheque or bill has been given, if such cheque or bill is duly honoured although such honouring is subsequent to the agreement (*Hadley v Hadley*, above). Cp. *Dawson v Isle* [1906] 1 Ch. 633. So, notice of an assignment of a debt is too late after a cheque for it has been given to the assignor (*Bence v Shearman* [1898] 2 Ch. 582, cited ABSOLUTE ASSIGNMENT). But in the Statute of Limitation a loan for which the lender gives his cheque dates from the time when the cheque is cashed (*Garden v Bruce*, L.R. 3 C.P. 300).

A payment may, generally, be made by the mere transfer of figures in an account without any money passing (*Eyles v Ellis*, 4 Bing. 112; *Bodenham v Purchas*, 2 B. & Ald. 39; *Hills v Mesnard*, 10 Q.B. 266); or, by giving receipts pursuant to an arrangement (*Amos v Smith*, 31 L.J. Ex. 423); or, sometimes, by an agreement (*Page v Meek*, 32 L.J.Q.B. 4); or by payment to a third person (*Waller v Andrews*, 3 M. & W. 312; *Bramston v Robins*, 4 Bing. 11); or by acceptance of goods (*Cannan v Wood*, 2 M. & W. 465; sub nom. *Canning v Wood*, 6 L.J. Ex. 112; *Hooper v Stephens*, 4 A. & E. 71); or by a service rendered (*Bodger v Arch*, 10 Ex. 333); or (conditionally) by bill or note (see cases collected, Rosc. Evidence in Civil Actions (20th edn), 668); or by sending a cheque by post in compliance with a request for a cheque (*Norman v Ricketts*, 31 S.J. 124, followed in *Thairlwall v Great Northern Railway* [1910] 2 K.B. 509, cited DIRECTOR). But sending the half of a banknote is not a payment (*Smith v Mundy*, 29 L.J.Q.B. 172). See hereon *Commercial Bank of Australia v Wilson* [1893] A.C. 181; *Re Cronmire* [1898] 2 Q.B. 383. Cp. *Hunter v Att-Gen* [1904] A.C. 161, cited PAID.

A receipt for a peppercorn rent was not a receipt for a “payment” within Conveyancing Act 1881 (c.41) s.3(4)—see Law of Property Act 1925 (c.20) s.45(2)—(*Re Moody and Yates*, 30 Ch. D. 344). In that case, Brett M.R. said that the

subsection was not applicable where rent is reserved in kind: "the words 'the receipt for the last payment due for rent under the lease', apply only when there is to be a payment of money". See *Re Highelt and Bird* [1903] 1 Ch. 287, cited RECEIPT.

A voluntary release is not equivalent to a payment "in full", within Bankruptcy Act 1883 (c.52) s.35—see Bankruptcy Act 1914 (c.59) s.29—nor, semble, would a release be such a payment if given for a less money payment than the real amount of the debt (*Re Keet* [1905] 2 K.B. 666, cited IN FULL).

As regards the allocation of shares of income in hand to infant beneficiaries under a trust being "payments", see *Re Vestey's Settlement* [1950] 2 All E.R. 891.

Setting aside a certain sum for accumulation was a payment within s.25(1) of the Finance Act 1941 (c.30) (*Re Banbury* [1951] Ch. 1).

Order "for payment of money": see *R. v Ravenscroft*, Russ. & Ry. 161; *R. v Richards*, Russ. & Ry. 193; *R. v Part*, 4 L.G.R. 1122, cited ARISE.

"Payment of any sum of money" (Criminal Justice Act 1948 (c.58) s.80(1)) does not include payment of a fine (*R. v Driscoll* [1955] 2 Q.B. 247).

"Payment of money" (County Court Rules Ord.11 r.7). An action for damages for personal injuries is a claim for the "payment of money" within the meaning of this rule (*Reid v Bolton (Thomas) & Sons* [1958] 1 W.L.R. 266).

"Appropriation of payments": see *Clayton's Case*, 1 Mer. 572, 585; *The Mecca* [1897] A.C. 286; *Mutton v Peat* [1900] 2 Ch. 79. See also *Seymour v Pickett* [1905] 1 K.B. 715, cited APPROPRIATION.

(Income Tax Act 1918, All Schedules Rules, r.23(2).) It is doubtful whether remuneration under Sch.E was an "annual payment" within the rule (*Jaworski v Polish Engineers in Great Britain* [1951] 1 K.B. 768).

"Payment" (Income and Corporation Taxes Act 1970 (c.10) s.204). A bonus credited to a director's account with a company, an account on which he was free to draw, became a "payment" for PAYE purposes under this section at the time it was credited (*Garforth v Newsmith Stainless* [1979] 1 W.L.R. 409).

"Confirmation and payment by [a confirming house]" meant that the confirming house assumed the financial liability (*Rusholme and Bolton and Roberts Hadfield v SG Read & Co, London* [1955] 1 W.L.R. 146).

"Payment . . . in lieu . . . of the remuneration which he would have received . . . had his employment not been terminated" (Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 (SI 1975/564) reg.7(1)(d)). A tax-free capital sum paid to an RAF officer on being made redundant was held not to be a "payment" within the meaning of this regulation, notwithstanding that the sum was described as taking into account the curtailment of his expected period of service (*R. v National Insurance Commissioner, Ex p. Stratton* [1979] 2 All E.R. 278).

"Payment in cash" within the terms of a charterparty means any method of transfer as good as cash which gives the transferee the unconditional right to the immediate use of the funds transferred with immediate interest earning capacity. So that where local banking law delayed by four days the date from which interest would run there was no "payment in cash" (*The Chikuma* [1981] 1 W.L.R. 314).

"In payment": see FOR; see also *Purnell v Shannon*, 32 S.L.R. 47, cited SATISFACTION.

"Payment or reward for . . . the adoption" (Adoption Act 1958 (c.5) s.50(1)). The payment of a sum of money by a childless couple to the natural mother in a surrogacy

PAYMENT

arrangement is not a "payment or reward" within the meaning of the section, provided there is no element of profit or financial gain (*Re An Adoption Application (Surrogacy)* [1987] 2 All E.R. 826).

"The time the . . . payment is received" (Value Added Tax Act 1983 (c.55) s.5(1)). The transfer of funds into a company's deposit account, on terms that sums could be transferred to that company's current account, constituted a "payment" within the meaning of this section (*Dormers Builders (London) v Customs and Excise Commissioners* [1988] S.T.C. 735). A sum paid for services to be performed at a later date, and then immediately lent back to the payer, was still a "payment" for the purposes of this section (*Customs and Excise Commissioners v Faith Construction* [1989] 3 W.L.R. 678). A payment may be "received" for the purposes of this section notwithstanding that the money is not yet under the control of the payee (*Nevisbrook v Customs and Excise Commissioners* [1989] S.T.C. 192).

"Payment" (Income and Corporation Taxes Act 1988 (c.1) s.338). The debiting of interest through computer entries does not necessarily constitute "payment" (*Minsham Properties v Price; Lysville v Same* [1990] S.T.C. 718).

"Payment or other reward" (Drug Trafficking Offences Act 1986 (c.32) s.1(3)). The potential market value of a drug found in the possession of a first time drug trafficker before any sale could be made by him could not be regarded as a "payment or other reward" within the meaning of this section (*R. v Butler, The Times*, December 29, 1992).

"Payments other than a periodical payment" (Income Support (General) Regulations 1987 (SI 1987/1967)). A payment of £10,500 by a former husband to his ex-wife 13 months after he stopped making weekly payments of £40 following his redundancy was a payment "other than a periodical payment" within the meaning of these regulations (*Bolstridge v Chief Adjudication Officer, The Times*, May 5, 1993).

(Employment Protection (Consolidation) Act 1978 (c.44) s.73(9).) An ex gratia payment made by an employer expressed to incorporate an employee's "statutory redundancy entitlement" did not have to be deducted from the basic award made by an industrial tribunal after a finding that the employee had been unfairly dismissed (*Boorman v Allmakes Ltd* [1995] I.C.R. 842).

"Payment in respect of expenses" (Wages Act 1986 (c.48) s.7). A payment in respect of a mileage allowance did not cease to be "in respect of expenses" just because it was generous and the words "in respect of" meant "referring to" or "relating to" and did not require precise numerical equivalence (*Southwark LBC v O'Brien* [1996] I.R.L.R. 420).

(Housing Act 1985 (c.68) s.398(6)(b).) "Other payments" were monies, other than rent, received by a landlord in the ordinary course of a lease, and included monies received from utilities' meters (*Jacques v Liverpool City Council* [1996] 7 C.L. 398).

(Employment Rights Act 1996 (c.18) s.214(2).) A "redundancy payment" in s.214(2) referred to a statutory rather than a voluntary redundancy payment (*Senior Heat Treatment Ltd v Bell* [1997] I.R.L.R. 614).

"The word 'payment' in ordinary parlance is capable of including a payment in kind, as that well-known expression exemplifies. One talks, for example, of paying a debt to society by the performance of community service. In my judgment, the word 'payment' in these statutory provisions includes a payment in kind, at any rate where the payment in kind is capable of valuation in monetary terms. In such a case the 'amount to be paid by him' in s.10(4) of [the Limitation Act 1980] refers not to the

amount of the work, but to its value. That construction, in my judgment, best gives effect to what appears to me to be the intention of Parliament.” (*Baker & Davies v Leslie Wilks* [2005] EWHC 1179, TCC per Judge Richard Havery QC.)

Stat. Def., Gambling Act 2005 (c.19) Sch.1 para.2.

Stat. Def., Settled Land Act 1925 (c.18) s.117(xxii); Income and Corporation Taxes Act 1970 (c.10) Sch.11 para.1; Finance Act 1982 (c.39) s.126; Representation of the People Act 1983 (c.2) ss.118, 185; Capital Transfer Act 1984 (c.51) s.63.

For an extensive list of earlier authorities see Stroud’s Judicial Dictionary, (5th edn), Vol.4, 1878–1883.

A reference to payment can include a reference to other forms of satisfaction, such as a set-off (*Burton (Collector of Taxes) v Mellham Ltd* [2006] UKHL 6).

In the Housing Act 1985 s.153B, “payment of rent” includes crediting of housing benefit to a local authority tenant’s rent account (*Hanoman v Southwark London Borough Council (No.2)* [2009] UKHL 29).

Stat. Def., “includes fees, allowances, reimbursements, loans and repayments” (National Health Service Act 2006 s.87(5)).

“Against the foregoing factual background, I am clearly of opinion that the transfer of shares in a money box company to an employee was a ‘payment’ within the meaning of s.203(1) of the Taxes Act. The word ‘payment’ is not defined for the purposes of s.203. It seems clear that the word has no single settled meaning but takes its colour from the context in which it is found: *Garforth v Newsmith Stainless Ltd*, 1978, 52 TC 522, at 528 per Walton J, following Jenkins LJ in *Re Vestey’s Settlement*, [1951] Ch 209, at 222. In the construction of tax legislation, in particular, it has been emphasized that payment is a practical commercial concept: *DTE Financial Services Ltd v Wilson*, [2001] EWCA Civ 455, at para.42 per Jonathan Parker LJ. In the latter case it was further pointed out that for the purposes of the PAYE system payment ordinarily means actual payment, in the form of a transfer of cash or its equivalent. For this purpose, the notion of an equivalent of cash may be important.” (*Aberdeen Asset Management Plc v HM Revenue and Customs* [2013] ScotCS CSIH 84.)

“Payment of fare”: see FARE.

“Part payment”: see EARNEST.

“Periodical payments”: see PERIODICAL.

“Punctual payment”: see PUNCTUAL.

See ON PAYMENT; PAID; TO BE PAID; UNPAID; IN CASH; PAYMENT IN DUE COURSE; RENTS AND PROFITS; VOLUNTARY PAYMENT; DEFAULT IN PAYMENT; MAKE PAYMENT.

PAYMENT IN CASH. See IN CASH.

PAYMENT IN DUE COURSE. See Bills of Exchange Act 1882 (c.61) ss.59, 89. See also ORDINARY COURSE.

PAYMENT OF RENT. Crediting housing benefit for a local authority’s rent account is payment for the purpose of ss.153A and 153B of the Housing Act 1985 (*Hanoman v Southward London Borough Council* [2009] UKHL 29).

PAYMENT ON THE SPOT. Stat. Def., Theft Act 1978 (c.31) s.3.

PAYMENT TO ENTER (COMPETITION). Stat. Def., Gambling Act 2005 (c.19) Sch.1.

PAYMENTS IN LIEU OF NOTICE. These are damages for breach of contract, and an employee is not employed for the period in respect of which payment in lieu of notice is given (*Dixon v Stenor* [1973] I.C.R. 157). See EMPLOY.

PAYMENT

PAYMENT SYSTEM. Stat. Def., Financial Services (Banking Reform) Act 2013 s.41.

PEACE. “Peace” particularly connotes “a quiet and harmless behaviour towards the King and his people” (Cowel). See also GOOD BEHAVIOUR; SURETY OF THE PEACE; BREACH OF THE PEACE.

Peace is declared, not when the treaty of peace is signed by the belligerents, but when such treaty is ratified: see *Lloyd v Bowring*, 36 T.L.R. 397. See also *Rattray v Holden*, 36 T.L.R. 798.

“If . . . peace [shall] have been declared” in a will: see *Re Grotrian, Cox v Grotrian* [1955] Ch. 501, where it was held that the declaration published as a supplement to the *London Gazette* “that the formal state of war with Germany is terminated . . . etc.” also brought about a state of peace.

“Peace officer”: see CONSTABLE.

“Peace, order and good government”: see GOOD RULE AND GOVERNMENT.

See BREACH OF PEACE.

PEACEABLY AND QUIETLY. In a covenant for quiet enjoyment, “‘quietly’ does not mean ‘undisturbed by noise’. When a man is quietly in possession it has nothing whatever to do with noise. ‘Peaceably and quietly’ means without interference—without interruption of the possession” (per Kekewich J., *Jenkins v Jackson*, 40 Ch. D. 71, which see for discussion of *Shaw v Stenton*, 27 L.J. Ex. 253, as explained by *Sanderson v Berwick*, 13 Q.B.D. 547. See also *Robinson v Kilvert*, 41 Ch. D. 88). See QUIET ENJOYMENT.

PECK. Stat. Def., Weights and Measures, etc. Act 1976 (c.77) s.1.

PECULIAR. “Peculiar circumstances” for enlarging time for enrolling a decree: see *Hooper v Gumm*, 26 L.T. 537; Cp. SPECIAL CIRCUMSTANCES.

“An ecclesiastical ‘peculiar’ signifies a particular parish or church that hath jurisdiction within its self, for *probat* of wills, etc. exempt from the ordinary, and the bishops courts. The Kings chappel is a royal peculiar, exempt from all spiritual jurisdiction, and reserved to the visitation and immediate government of the King himself, who is supreme ordinary” (Cowel). The court for peculiars was the Court of Arches (3 Bl. Com. 65). The independent jurisdiction of benefices “exempt or peculiar” was abolished by Pluralities Act 1838 (c.106) s.108. See also Phil. Ecc. Law, Pt 2, Ch.7.

PECUNIA. See MONEY.

PECUNIARY ADVANTAGE. The evasion or deferring of a debt amounts to deriving a pecuniary advantage within the meaning of s.71(5) of the Criminal Justice Act 1988 (confiscation of proceeds of offence) (*R. v Smith* [2002] 1 W.L.R. 54, HL).

An underpayment of tax represents a pecuniary advantage for the purposes of the same section (*R. v Moran* [2002] 1 W.L.R. 253, CA).

An unrealised increased value in shares is not a pecuniary advantage (although a person would obtain pecuniary advantage by realising the increase in value on sale) (*R. v Rigby* [2006] EWCA Crim 1653).

“However, the evasion by a smuggler of duty or VAT constitutes, for the purposes of confiscation proceedings, the obtaining of a pecuniary advantage only if he personally owes that duty or VAT. This was established by the House of Lords in May [2008] UKHL 28; [2008] 1 AC 1028; [2009] 1 Cr App R (S) 31 and Jennings [2008] UKHL

29; [2008] 1 AC 1046; [2008] 2 Cr App R 29 and applied in Chambers [2008] EWCA Crim 2467 and Mitchell [2009] EWCA Crim 214.” (*White v The Crown* [2010] EWCA Crim 978.)

PECUNIARY ASSET. On an application by a husband for reduction of maintenance payable to a divorced wife on the ground of her remarriage, it was held that the second husband was in the nature of a pecuniary asset to the wife (*Perkins v Perkins*, 107 L.J.P. 115).

PECUNIARY CONSIDERATION. The exemption from registration of annuities contained in Life Annuities Act 1777 (c.26) s.8, for “any voluntary annuity granted without regard to pecuniary consideration” was held to comprise the case of a grantee giving up his business to the grantor (*Crespigny v Wittenoom*, 4 T.R. 790; *Hutton v Lewis*, 5 T.R. 639), or the assignment of a leasehold interest (*James v James*, 2 Brod. & B. 702), or where the consideration was a transfer of stock (*Cumberland v Kelley*, 1 L.J.K.B. 172), or the giving a better security for an existing debt (*Frost v Frost*, 3 B. & Ad. 612n). But bank notes (*Wright v Reed*, 3 T.R. 554; *Cousins v Thompson*, 6 T.R. 335; *Morris v Wall*, 1 B. & P. 208), cheques (*Pool v Cabanes*, 8 T.R. 328), and bills of exchange or promissory notes (*Rumball v Murray*, 3 T.R. 298) were held to be “pecuniary consideration” within the section.

Under Annuities Act 1813 (c.141) (which replaced Life Annuities Act 1777 (c.26)), it was held that the surrender of a life interest in a sum of money and of a contingent interest in the corpus, was not a “pecuniary consideration” within s.2, and was “without regard to pecuniary consideration or money’s worth” within s.10 (*Evatt v Hunt*, 22 L.J.Q.B. 348, following *Blake v Attersoll*, 2 L.J.O.S.K.B. 193). So, of an annuity on the conveyance of property (*Mestayer v Biggs*, 3 L.J. Ex. 292). Referring to some of the foregoing cases, the court (*Att-Gen v Wolverton*, 65 L.J.Q.B. 616, affirmed 66 L.J.Q.B. 202, reversed on another point in House of Lords [1898] A.C. 535) said: “This Act (c.141) excepted ‘annuities granted without regard to pecuniary consideration or money’s worth’ from the operation of the statute; and it was held, in several instances, that annuities granted in consideration of the conveyance of an estate, or as part of a family arrangement, or in consideration of marriage, were granted without regard to ‘money’s worth’, within the meaning of the Act, and consequently did not require enrolment”. But the cancellation of an acceptance and the extinguishment of the debt thereby secured, come within “money’s worth” (*Burgess v Richardson*, 4 L.T. 316).

PECUNIARY INTEREST. If a salary is attached to the office of mayor, that is a “pecuniary interest” within Municipal Corporations Act 1882 (c.50) s.22(3) (see now Local Government Act 1933 (c.51) ss.18–20), which prevents a member of the council from voting for himself (*Re Louth* [1894] 1 Q.B. 767).

A “pecuniary interest” (Local Government Act 1933 (c.51) s.76(1)) whereby a member of a local authority is precluded from voting is to be construed irrespective of whether the vote would be to the pecuniary advantage or disadvantage of the person voting (*Brown v DPP* [1956] 2 Q.B. 369).

“Pecuniary interest... in any... other matter” (Education (School Government) Regulations 1987 (SI 1987/1359) Sch.2 para.2(1)). A proposal to close two schools and replace them with city technology colleges was an “other matter” in which the schools’ teacher governors had a “pecuniary interest” which barred them from participating in discussions about the proposal or voting on it (*Bostock v Kay* (1989) 133 S.J. 749). Where governors of a county school proposed applying to alter its status

PECUNIARY

to that of a grant maintained school, there was no evidence that such a change would alter the financial position of the teacher governors. Accordingly those governors who were members of the school's staff had no "pecuniary interest" in the proposal for the purposes of this paragraph (*R. v Governors of Small Heath School, Ex p. Birmingham City Council* [1990] C.O.D. 23).

See INTEREST; INTERESTED IN.

PECUNIARY INVESTMENTS. See *Re Price* [1905] 2 Ch. 55.

PECUNIARY LEGACY. "If you find simply the word 'legacy' used, and a direction to apportion property amongst the legatees, there—unless there be something apparent on the face of the will which shows that the testator has not used the word in its ordinary legal signification—it will include annuitants. The expression 'pecuniary legatees' in itself, I do not think, would go further than this—it would exclude specific legatees, that is, legatees of mere chattels, but it would have no effect in excluding, prima facie, annuitants from taking the same benefit as they would have taken if the word had been 'legatees' instead of 'pecuniary legatees'" (per Wood V.C., *Gaskin v Rogers*, L.R. 2 Eq. 291, where, however, annuitants were excluded, by a context, from participating in a residue given to persons "taking pecuniary legacies"). Cp. LEGACY; LEGATEE.

A direction relating to "pecuniary legacies" does not apply to the residue (*Re Elcom* [1894] 1 Ch. 303). See REST. See Administration of Estates Act 1925 (c.23) s.55.

PECUNIARY LOSS. See DAMAGES.

PECUNIARY REWARD. See MONEY.

PEDIGREE. "Pedigree animal": Stat. Def., Pet Animals Act 1951 (c.35) s.7.

PEDIGREE ANIMAL. Stat. Def., "a bovine animal of the genus *Bos* in respect of which a pedigree certificate has been issued by a recognised breed society and presented to the Secretary of State or an agent acting on her behalf by the day of the assessment of the category into which the animal falls" (Cattle Compensation (England) Order 2006 (SI 2006/168) art.2).

PEDLAR. In the Pedlars' Acts, "'pedlar' means any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods wares or merchandise, or procuring orders for goods wares or merchandise, immediately to be delivered, or selling or offering for sale his skill in handicraft" (Pedlar's Act 1871 (c.96) s.3). See thereon *Gregg v Smith*, L.R. 8 Q.B. 302.

Observe, a pedlar works "without" a horse or beast; and though (by s.6 of the Act) his certificate gives him the same exemption from market tolls as a "licensed hawker" has under Markets and Fairs Clauses Act 1847 (c.14) s.13 (see *Llandudno v Hughes* [1900] 1 Q.B. 472), yet that is only so while he is acting as a pedlar, and he is not exempt from toll when exposing for sale in a market goods in a cart drawn by a horse (*Woolwich v Gardiner* [1895] 2 Q.B. 497, which shows that *Howard v Lupton*, 44 L.J.M.C. 150, is no longer of authority). See EXPOSE.

A person who regularly supplements his own income selling goods for a charity by going from house to house is a "pedlar" within the meaning of s.3(1) of the Pedlars Act 1871 (c.96) (*Murphy v Duke* [1985] 2 W.L.R. 773). A pedlar is an itinerant seller who trades as he travels as distinct from one who merely travels to trade. Thus a trader who sold wrapping paper from a portable stand in a stationary position in a street market was not a "pedlar" (*Watson v Malloy, Watson v Oldrey* [1988] 1 W.L.R. 1026).

There was nothing in s.3(1) nor in the ordinary meaning of “pedlar” to exclude a person using a device to assist with the transportation of his goods (*Shepway DC v Vincent* [1994] C.O.D. 451).

PEEL’S ACTS. Criminal Statutes Repeal Act 1827 (c.27), which repealed numerous criminal statutes; Larceny Act 1827, and Malicious Injuries to Property Act 1827 (cc. 29, 30), which reformed the criminal law in regard to larceny and malicious injuries; Offences Against the Person Act 1828 (c.31). The three lastly named Acts, and much subsequent criminal legislation, were repealed by Criminal Statutes Repeal Act 1861 (c.95), and were replaced by the Criminal Law Consolidation and Amendment Acts of 1861, namely, Accessories and Abettors Act 1861 (c.94); Larceny Act 1861 (c.96); Malicious Damage Act 1861 (c.97); Forgery Act 1861 (c.98); Coinage Offences Act 1861 (c.98); and Offences Against the Person Act 1861 (c.100). See Preface to 2nd edn of Greaves on those Acts for their history. (Mr Greaves was the draughtsman of the Acts.)

The Sliding Scale Act (c.60): see BOUGHT.

New Parishes Act 1843 (c.37); New Parishes Act 1844 (c.94).

PEER. “Peeres, *pares*’, signifie in our common law those that are impannelled in an inquest upon any man, for the convicting or clearing him of any offence for which he is called in question; and the reason thereof is, because the course and custome of our nation is to try every man in such case by his equals or peers . . . But this word is most principally used for those that be of the nobility of the realm and Lords of the Parliament, the reason whereof is, that although there be a distinction of degrees in our nobility, yet in all public actions they are equal, as in their votes in Parliament, and in passing in tryal upon any noble-man, etc.” (Cowel.)

The peers of Parliament are the Lords Spiritual and the Lords Temporal: see PARLIAMENT; 1 Bl. Com. 155–158. “The number of Lords Spiritual, sitting and voting as Lords of Parliament, shall not be increased by the foundation of a new bishopric in pursuance of this Act” (Bishoprics Act 1878 (c.68) s.5).

“Trial by peers of Parliament”: see 4 Bl. Com. 259 et seq., 348; the other trial “by his peers” is the same as trial by jury (see also 4 Bl. Com. 349). The privilege of peerage in criminal proceedings was abolished by the Criminal Justice Act 1948 (c.58) s.30.

Note generally the effect of the House of Lords Act 1999 (c.34), which excludes hereditary peers from membership of the House of Lords.

Stat. Def., House of Lords Reform Act 2014 s.6.

See PROHIBITED.

PEERAGE. “A peerage is an inalienable incorporeal hereditament created by the act of the Sovereign, which, if and when he creates it, carries with it certain attributes which attach to it not by reason of any grant of those attributes by the Crown, but as essentially existing at common law by reason of the enablement created by the grant of the peerage” (per Lord Wrenbury in *Viscountess Rhondda’s Claim* [1922] 2 A.C. 339 at 393).

“Peerage” (Act of Union between Great Britain and Ireland 1800 (c.67) art.4 cl.5) means the status and condition of a peer; therefore, in the case of an Irish peer holding many titles (by any one of which he could have sat in the Irish House of Peers), there is no “extinction” of a peerage so long as either of those titles remains in him or his descendants (*Fermoy’s Case*, 5 H.L. Cas. 716).

Note generally the effect of the House of Lords Act 1999 (c.34), which excludes hereditary peers from membership of the House of Lords.

As to privilege of peerage, see PEER.

PEINE. See PAIN.

PEN. See HOWE.

PENAL. “A penal law is a statute which imposes a penalty” (per Parke B., *Spencer v Swannell*, 7 L.J. Ex. 75). In that case it was held that an action of debt upon Easter Offerings and Tithes Act 1548 (c.13) was a penal action within Common Informers Act 1623 (c.4) s.4. An action for treble damages for pound breach under Distress for Rent Act 1690 (c.5) s.4 is a penal action (*Jones v Jones*, 22 Q.B.D. 425; but see *Castleman v Hicks*, C. & M. 266); so, of an action under Distress for Rent Act 1738 (c.19) s.3 to recover double value of goods fraudulently removed to avoid distress for rent (*Hobbs v Hudson*, 25 Q.B.D. 232); so, of an action by a common informer (*Martin v Treacher*, 16 Q.B.D. 507, cited OFFENCE).

Actions for “penalties, damages, or sums of money given to the party grieved by any statute now or hereafter to be in force” which by Civil Procedure Act 1833 (c.42) s.3 (cp. now Limitation Act 1939 (c.21) s.2) were to be brought within two years of the CAUSE OF ACTION, were “what are popularly called ‘penal actions’”, and did not include an action against directors or promoters of a company under Directors Liability Act 1890 (c.64) (see Companies Act 1948 (c.38) ss.43, 44) for the amount of a lost bet paid by cheque under Gaming Act 1835 (c.41) s.2 (*Shirman v Lyons*, 38 T.L.R. 560).

An order for payment of costs was not an “order for payment of any penal or other sum” within s.24(1) of the Summary Jurisdiction and Criminal Justice Act 1935 (Northern Ireland). An order dismissing a summons in a criminal matter in Northern Ireland and directing the complainant to pay costs was not, therefore, open to appeal. This was in accordance with the principle, elementary both in England and Ireland, that an acquittal could not be questioned and brought before any other court (*Benson v Northern Ireland Road Transport Board* [1942] A.C. 520).

“In its ordinary acceptance ‘penal’ may embrace penalties for infractions of general law which do not constitute offences against the state; it may, for many legal purposes, be applied with perfect propriety to penalties created by contract; and it therefore, when taken by itself, fails to mark that distinction between civil rights and criminal wrongs which is the very essence of the international rule” that no country executes the penal laws of another—“penal”, within such rule, comprising “not only prosecutions and sentences for crimes and misdemeanours, but all suits in favour of the state for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue or other municipal laws, and all judgments for such penalties” (*Huntington v Attrill* [1893] A.C. 150, citing for the latter proposition, *Wisconsin v Pelican Insurance*, 8 Sup. Ct. 1370).

“Penal servitude”: see Penal Servitude Act 1853 (c.99) ss.4, 6; this Act, with Penal Servitude Act 1857 (c.3) s.2, abolished transportation. As to the power of a colonial court to order penal servitude, see *R. v Mount*, L.R. 6 P.C. 283. “The Penal Servitude Acts 1853 to 1891”: see Short Titles Act 1896 (c.14) Sch.2. Penal servitude was abolished by Criminal Justice Act 1948 (c.58) s.1. See also PRISONER.

“Penal sum”: see LIQUIDATED DAMAGES; PENALTY.

PENALISE. “Penalising him for doing so” (Employment Protection (Consolidation) Act 1978 (c.44) s.23(1)(a)). Granting pay rises only to employees who accepted

an offer of personal contracts in lieu of collective bargaining by their trade union "penalised", within the meaning of this section, those employees who did not accept the offer (*Associated British Ports v Palmer*, *The Times*, May 5, 1993).

PENALTY. "'Penalty' is an ambiguous word. A penalty may be the subject-matter of an information, or of a complaint" (per Wright J., *R. v Lewis* [1896] 1 Q.B. 665). See *Chisholm v Mackenzie*, 30 S.L.R. 604, cited PAIN.

Where an Act imposes a penalty for anything done (*Crepps v Durden*, 2 Cowp. 640, cited NECESSITY) or omitted to be done (*Llewellyn v Glamorgan Vale Railway* [1898] 1 Q.B. 473, cited OWNER) on a day, that generally means only one penalty for the entire day; e.g. a man may "exercise his ordinary calling on a Sunday" on any number of times on a particular Sunday but will only be liable to one penalty therefor under Sunday Observance Act 1677 (c.7) (*Crepps v Durden*). So, only one penalty could be recovered for each day that a railway company offended against Railway Clauses Consolidation Act 1845 (c.20) s.54, by not making a substituted road for an existing road which the company had interrupted (*Llewellyn v Glamorgan Vale Railway*).

"The civil liability arising from a breach of a statutory duty is of a wholly different nature from a penalty for such a breach. The former gives no cause of action unless damage to a third party follows from it, and then, in general, gives ground for an action for the amount of such damage at the suit of such third parties. But penalties for breaches of statutory duties apply whether damage has been caused or not" (per Fletcher Moulton L.J. in *David v Britannia Merthyr Coal Co* [1909] 2 K.B. 149 (sub nom. *Britannic Merthyr Coal Co v David* [1910] A.C. 74), cited MINE. See DUTY. See also *Simmons v Newport, etc.* [1921] 1 K.B. 616; *Couch v Steel*, 23 L.J.Q.B. 125).

"Penalty adjudged" in Metropolitan Police Courts Act 1839 (c.71) s.50. A recommendation for the making of an order for deportation was not part of the penalty adjudged within the section: see *R. v Campbell, Ex p. Ahmed Hamed Moussa* [1921] 2 K.B. 473.

Where an Act gives a power to inflict a "penalty or forfeiture", such words "clearly relate to a sum inflicted" (per Groves J., *Ex p. Elsdon*, below); and a power to appeal with respect to any "penalty or forfeiture" does not embrace an order for demolition of buildings (*Ex p. Elsdon*, 9 Q.B.D. 41; see also *Bermondsey v Johnson*, L.R. 8 C.P. 441).

"Penalty, damage, or compensation" (Cruelty to Animals Act 1849 (c.92) s.14): see *R. v Novis* [1905] 2 K.B. 456, cited FINE.

Notwithstanding what was said by Parke B., in *Chilton v London & Croydon Railway* (16 L.J. Ex. 89), a liability created by a railway company's by-law for non-production by a passenger of his ticket was, semble, a "penalty or forfeiture" under Railway Clauses Consolidation Act 1845 (c.20) s.145 (*Brown v Great Eastern Railway*, 2 Q.B.D. 406); and certainly that was so of a liability under a by-law for travelling without a ticket (*London, Brighton & South Coast Railway v Watson*, 4 C.P.D. 118); *secus*, of an ordinary liability for using a ticket for another station than that named contrary to the conditions of the ticket but where there was no by-law applicable (*Great Northern Railway v Winder* [1892] 2 Q.B. 595).

Additional "rent by way of penalty" to secure the performance of stipulations of varying degrees of importance, is a penalty and not liquidated damages (*Willson v Love* [1896] 1 Q.B. 626).

Sometimes, however, a "penalty" will connote agreed liquidated damages (*Fletcher v Dyche*, 2 T.R. 32; *Duckworth v Alison*, 5 L.J. Ex. 171; *Crux v Aldred*, 14 W.R. 656;

Bonsall v Byrne, 16 W.R. 372). See also *Re White and Arthur*, 84 L.T. 594; *Diestal v Stephenson* [1906] 2 K.B. 345, distinguishing *Willson v Love*, above; *Public Works Commissioners v Hill* [1906] A.C. 368, cited LIQUIDATED DAMAGES. See also PACTIIONAL; *Cameron-Head v Cameron & Co* [1919] S.C. 627.

“Penalty or liquidated damages”: see *Dunlop Pneumatic Tyre Co v New Garage & Motor Co* [1915] A.C. 79, cited DAMAGES, and see *Imperial Tobacco Co v Parslay*, 52 T.L.R. 585, and *Cellulose Acetate Silk Co v Widnes Foundry (1925) Ltd* [1933] A.C. 20; *Cooden Engineering Co v Stanford* [1953] 1 Q.B. 86; *Bridge v Campbell Discount Co* [1962] A.C. 600.

Penalty for delay in a building contract will be waived if additional works be ordered which cause the delay (*Dodd v Churton* [1897] 1 Q.B. 562).

A charter granting “penalties” does not include money payable on estreated recognizances (*R. v Dover*, 4 L.J. Ex. 94, cited CONTEMPT).

An agreement by a member of a trade union to refund a payment made as on a total incapacity, if he should return to his trade, was a penalty within Trade Union Act 1871 (c.31) s.4(2), and the refunding could not be enforced by action: see *Baker v Ingall* [1912] 3 K.B. 106.

“Penalties, damages or sums of money”, in Civil Procedure Act 1833 (c.42) s.3 (cp. Limitation Act 1939 (c.21) s.2): see *Jarvis v Surrey CC*, 94 L.J.K.B. 609.

(Gasworks Clauses Act 1847 (c.15) ss.21, 23; Waterworks Clauses Act 1847 (c.17) ss.62, 63.) Penalties in these sections were to be regarded as punitive and not as a method of assessing compensation (*Colne Valley Water Co v Watford & St. Albans Gas Co* [1948] 1 K.B. 500).

Disqualification from holding or obtaining a licence under s.6(1) of the Road Traffic Act 1930 (c.43) was not a penalty to which reference had to be made in a complaint which was to be heard under the Summary Jurisdiction (Scotland) Act 1908 (c.65) ss.18, 19, Sch.C (*Craig v Adair*, 1950 S.L.T. 274).

An agreement to pay a sum towards redecoration was held not to be an agreement to pay a penalty (*Boyer v Warbey* [1953] 1 Q.B. 234).

Arrears of national insurance contributions, although recoverable as a “penalty” under reg.19(5) of the National Insurance (Contributions) Regulations 1948 (No.1417) were a civil debt and not a penalty which could be mitigated by the justices under s.126(1) of the Magistrates’ Courts Act 1952 (c.55) (*Leach v Litchfield* [1960] 1 W.L.R. 1392).

“Penalty” (Landlord and Tenant Act 1954 (c.56) s.38(1)). A clause in a tenancy agreement by which the tenant undertook to pay to the landlord any costs and expenses, including legal costs and charges incurred by the landlord in, among other things, defending an application made by the tenant for a new lease under Pt II of the Act, was held to be a “penalty” within the meaning of s.38(1) and therefore void (*Stevenson & Rush (Holdings) v Langdon* [1979] E.G. 89).

“Proceedings . . . for the recovery of a penalty” (Civil Evidence Act 1968 (c.64) s.14(1)). Fines imposable by the Commission of the European Communities under arts 85 and 86 of the Treaty of Rome and art.15 of General Regulation 17 are “penalties” within the meaning of this section. The section is not limited to such penalties as are imposed as the result of proceedings, but covers penalties imposed by administrative action and recoverable by proceedings; as are these fines by virtue of the European Communities Act 1972 (c.68) (*Re Westinghouse Electric Corp Uranium Contract* [1978] A.C. 547). The award of additional damages under s.17(3) of the Copyright Act

1956 (c.74) did not constitute a “penalty” within the meaning of this section (*Overseas Programming v Cinematographische Commerz-Anstalt* [1985] E.C.C. 176).

(Rehabilitation of Offenders Act 1974 (c.53) s.5(8).) An endorsement of a driving licence was not a “penalty” for the purposes of s.5(8) (*Power v Provincial Insurance Plc* [1998] R.T.R. 61).

An order banning a person from attending football matches made under the Football Spectators Act 1989 as amended by the Football (Disorder) Act 2000 was not a “penalty” for the purpose of art.7(1) of the European Convention on Human Rights (not to impose a heavier penalty for a criminal offence than was available at the time when the offence was committed). Although the order was made in the context of a criminal conviction, its purpose was not punitive but to protect the public. (*Gough v Chief Constable of Derbyshire Constabulary* [2001] 3 W.L.R. 1392, Q.B.D., DC).

An order disqualifying an adult from working with children is not a penalty within the meaning of the lawful punishment provisions of art.7 of the European Convention on Human Rights, since it is preventative in nature and not punitive (*R. v Field* [2003] 1 W.L.R. 882, CA).

“Like penalty”: see LIKE.

“Right or penalty”: see RIGHT.

A suspended custodial sentence is a penalty within the meaning of the double jeopardy prohibition in the Schengen Agreement (*Kretzinger v Hauptzollamt Augsburg* (Case C-288/05) [2007] 3 CMLR 43 ECJ).

Where a term of imprisonment is imposed in default of payment of a confiscation order, the term and the order are together to be considered as the penalty for the purposes of art.7(1) of the European Convention on Human Rights (not to impose heavier penalty than under legislation in force when offence committed) (*Togher v Revenue and Customs Prosecution Office* [2007] EWCA Civ 686).

A financial reporting order under s.76 of the Serious Organised Crime and Police Act 2005 is not a penalty for the purposes of art.7(1) of the European Convention on Human Rights (*R. v Adams* [2008] EWCA Crim 914).

The label “penalty” is not itself sufficient to require the imposition of a criminal standard (*Revenue and Customs Commissioners v Khawaja* [2008] EWHC 1687 (Ch)).

“Although we were shown no ministerial statements explaining why automatic deportation was introduced by the [UK Borders Act 2007], I presume that at least one reason was to prevent re-offending in this country by a foreign criminal. It is right to say that the Secretary of State is not required to consider the risk of re-offending (although the issue may arise when Article 8 is being considered). Nonetheless the fact that automatic deportation will prevent re-offending by a foreign criminal in this country suggests that the measure can properly be categorised as preventive rather than punitive for the purposes of Article 7. In any event I have little doubt that the ECtHR if faced with the issue in this case would reach the same conclusion as the Commission did in *Moustaquim*, namely that ‘a measure of this kind taken in pursuance, not of the criminal law but of the law on aliens is not in itself penal in character.’ For these reasons I would reject Mr Malik’s argument that automatic deportation under the 2007 Act is a ‘penalty’ for the purposes of Article 7.” (*A.T. (Pakistan) v Secretary of State for the Home Department* [2010] EWCA Civ 567.)

“47. That discussion makes clear that the notion of ‘penalty’ in Article 7(1) [of the European Convention on Human Rights] has an autonomous meaning. The starting

point in determining whether something is a penalty is whether the measure in question is imposed following conviction for a criminal offence. Significantly, there is a distinction to be drawn between a measure that constitutes in substance a ‘penalty’ and a measure that concerns the ‘execution’ or ‘enforcement’ of the ‘penalty’. At paragraph 98 the Court concluded that where the nature and purpose of the measure relates to the remission of a sentence or a change in a regime for early release, this does not form part of the ‘penalty’ within the meaning of Article 7(1).” (*Hall v Parole Board of England & Wales* [2015] EWHC 252 (Admin).)

PENCIL. See WRITING.

PENDING. A legal proceeding is “pending” as soon as commenced (on which see 5 Rep. 47, 48; 7 Rep. 30), and until it is concluded, i.e. so long as the court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein.

Action “pending” (Patent Law Amendment Act 1852 (c.83) s.42); see *Holland v Fox*, 23 L.J.Q.B. 211.

“Pending” appeal: see *Taylor v Greenhalgh*, 24 W.R. 311.

A prosecution is “pending” after a disagreeing jury has been discharged when there is the intention (informally stated) to empanel a fresh jury (*R. v Freeman’s Journal* [1902] 2 I.R. 82).

“A criminal case is ‘pending’ while the time for appeal has not run out at least, and most assuredly in the case of a man who is appealing or is proposing to appeal” (per Humphreys J., in *Delbert-Evans v Davies & Watson* [1945] 2 All E.R. 167).

“Pending” (Criminal Appeal Act 1907 (c.23) s.14(2)). Where an appeal has been dismissed and an application for the fiat of the Attorney-General to take the case to the House of Lords has been made but not yet decided upon, there is an appeal “pending” within the meaning of this section (*R. v Welham* [1960] 2 Q.B. 445).

As to what is a cause or proceeding “pending” within Judicature Act 1873 (c.66) s.24(5), now Judicature Act 1925 (c.49) s.41: see *Hart v Hart*, 18 Ch. D. 670; *Marshall v Marshall*, 5 P.D. 19; see also Ann. Pr. In Judicature Act 1873 s.24(7) (now Judicature Act 1925 s.43), a cause is “pending”, even after final judgment, so long as such judgment remains unsatisfied (*Salt v Cooper*, 16 Ch. D. 544, on which see *Ponnamma v Arumogam*, 74 L.J.P.C. 105); but after foreclosure absolute, a foreclosure action is at an end (*Wills v Luff*, 38 Ch. D. 197). Garnishee proceedings are “pending” proceedings and cannot be restrained by injunction (*Llewellyn v Carrickford* [1970] 1 W.L.R. 1124).

As to when proceedings were “pending” within Companies Act 1908 (c.69) s.140 (see Companies Act 1948 (c.38) s.226), see *Bowkett v Fullers* [1923] 1 K.B. 160.

So, an action may be “pending” within Merchant Shipping Act 1854 (c.104) s.514 (now Merchant Shipping Act 1894 (c.60) s.504), although an adverse claimant has obtained judgment condemning the ship (*Leycester v Logan*, 26 L.J. Ch. 306).

An action for infringement of a patent was not, after judgment, a “pending” action within Patents and Designs Act 1883 (c.57) s.18(10) (see now Patents Act 1949 (c.87) ss.29(1), 33(1)), although an appeal from the judgment was pending (*Cropper v Smith*, 28 Ch. D. 148). But such an action which had stood over generally with a view to compromise and which, for some years, had been allowed to sleep, was “pending” within s.18(10) of the Patents, etc. Act 1883 (*Brooks v Lycett, etc. Co* [1904] 1 Ch. 512; see also *Singer v Stassen*, 1 Pat. Cas. 121; *Woolfe v Automatic Picture Gallery Ltd* [1903] 1 Ch. 18). An action is not “pending” within the meaning of this section unless

a writ has been both issued and served (*Foseco International's Patent* [1976] F.S.R. 244). As to pending "legal proceeding" in the same section, see *Re Hall*, 21 Q.B.D. 137.

"Pending the settlement of the dispute": see *Niddrie and Benhar Coal Co v Dee* [1927] A.C. 299; *Anchor Donaldson v Crossland* [1929] A.C. 297.

"Any proceedings are pending on an application" (Landlord and Tenant Act 1954 (c.56) Sch.IX para.8), does not include an appeal pending from an order made by a tribunal before the material date (*Etam v Forte* [1955] 1 Q.B. 239).

Where a marriage has been dissolved, the wife's application for an injunction to restrain her former husband from taking the children out of the jurisdiction was not "pending proceedings" within the meaning of r.124 of the Matrimonial Causes Rules 1968 (SI 1968/219 (L.4)) (*Sherrard v Sherrard*, 119 New L.J. 774).

(R.S.C. Ord.4 r.9(1).) An action is "pending" if the writ has been issued, irrespective of whether it has been served on the defendant (*Arab Monetary Fund v Hashim (No.4)* [1992] 1 W.L.R. 1176).

"Pending development of the land" (Housing Act 1985 (c.68) Sch.1 para.3). Where permission had been refused for proposed development of land, that development could no longer be said to be "pending" (*Lillieshall Road Housing Co-operative v Brennan* (1991) 24 H.L.R. 195).

"Proceedings which are pending" (Children Act 1989 (c.41) Sch.14 para.1(1)). A judge's order to authorise a short-term placement and to adjourn a long-term placement qualified the proceedings as "pending" proceedings which were therefore preserved by this paragraph (*Re H. (Wardship: Pending Proceedings)* (1992) 156 L.G.Rev. 548). "Pending proceedings" mean genuine, active applications in wardship, whether the hearing of an originating summons or an ancillary application (*C. (A Minor) (Children Act 1989: Transitional Provisions)* [1992] 1 F.L.R. 628).

"The true position in my judgment is this. 'Pending' in paragraph 16 [of Schedule 2 to the Immigration Act 1971] means no more than 'until'. The word is being used as a preposition, not as an adjective. Paragraph 16 does not say that the removal must be 'pending', still less that it must be 'impending'. So long as the Secretary of State remains intent upon removing the person and there is some prospect of achieving this, paragraph 16 authorises detention meanwhile. Plainly it may become unreasonable actually to detain the person pending a long delayed removal (i.e. throughout the whole period until removal is finally achieved). But that does not mean that the power has lapsed." (*R. (Khadir) v Secretary of State for the Home Department* [2005] UKHL 39 at [32] per Lord Brown of Eaton-under-Heywood.)

"The power to detain is a broad one. In *R (Khadir) v Secretary of State for the Home Department* [2005] UKHL 39, [2006] 1 AC 207 at [32] Lord Brown of Eaton-under-Heywood stated that detention will be authorised 'so long as the Secretary of State remains intent upon removing the person and there is some prospect of achieving this'. 'Pending' removal or departure in Schedule 2 of the 1971 Act means no more than 'until'." (*R. (on the application of S.M.) v F.M.* [2011] EWHC 338 (Admin).)

See IMPENDING; LIS PENDENS; STAGE.

PENDING LAND ACTION. A "pending land action" within the Land Charges Act 1972 (c.61) s.17(1) is an action or proceeding claiming a proprietary right in land against the owner of the land; proceedings seeking to enjoin any disposition of land are not registrable as a "pending land action" (*Calgary and Edmonton Land Co v*

Dobinson [1974] Ch. 102). A summons to obtain the transfer of a specified property under s.24 of the Matrimonial Causes Act 1973 (c.18) related to that property and accordingly related to land within the meaning of s.17(1) of the 1972 Act, and was therefore a “pending land action” registrable under s.5(1)(a) of that Act (*Whittingham v Whittingham* (1978) 36 P. & C.R. 164). An action in which an easement over land is directly in issue is a “pending land action” and is therefore registrable under s.5 (*Greenhi Builders v Allen* [1979] 1 W.L.R. 156). Proceedings in the county court begun by a landlord under s.1(3) of the Leasehold Property (Repairs) Act 1938 (c.34) seeking leave to commence an action for breaches of repairing covenants in a lease were held to relate sufficiently to land to be a “pending land action” (*Selim v Bickenhall Engineering* [1981] 1 W.L.R. 1318). A claim by land developers in respect of time spent and expenditure incurred by them in respect of the development contract and the application for planning permission was a claim to money and was not a “claim relating . . . an interest in . . . land” and did not therefore become a “pending land action” within the meaning of s.17(1) (*Haslemere Estates v Baker* [1982] 3 All E.R. 525).

(Land Charges Act 1972 (c.61) s.17(1).) An action for damages for breach of a landlord’s repairing covenant in a lease, even though coupled with a claim for a mandatory order to complete the repairs, was not a “pending land action” within the meaning of this section because it was not a claim “relating to . . . any interest in . . . land” (*Regan and Blackburn v Rogers* [1985] 1 W.L.R. 870). An action by a servient landowner, asserting that an easement over his land has ceased to exist, is a “pending land action” within the meaning of this section, and so can be protected by a caution registered against the dominant owner’s registered land pursuant to s.59(1) of the Land Registration Act 1925 (c.21) (*Willies-Williams v National Trust* (1993) 65 P. & C.R. 359).

PENNY. “Penny Savings Bank”: Stat. Def., Trustee Savings Bank Act 1969 (c.50) s.95; National Savings Bank Act 1971 (c.29) s.16(4).

PENSION. “Pension”, in s.1(2) of the Bankruptcy Act 1914 (c.59), providing for an order for payment to the trustee in bankruptcy of all or part of any “pension” to which the bankrupt is entitled, applies to a police pension which by statute is inalienable and does not vest in the trustee in bankruptcy (*Re Garrett* [1930] 2 Ch. 137).

Pension money reduced into possession by the pensioner or his agent lost its character of pension, even within s.141 of the Army Act 1881 (c.58): see *Jones v Coventry*, 25 T.L.R. 736. So, a lump sum granted to a retiring civil servant by way of additional allowance under Superannuation Act 1909 (c.10) s.1 was part of his property and was divisible among his creditors in bankruptcy: see *Re Lupton*, 55 S.J. 689; but see *Nixon v Att-Gen* [1931] A.C. 184.

As to calculation of a schoolmaster’s pension, see *Goldie v Torthorwald School Board*, 33 S.L.R. 197, cited SALARY; cp. *R. v London CC* [1906] 1 K.B. 346, cited COMPENSATION.

“Pension . . . payable in respect of disablement or disability” (Attachment of Earnings Act 1971 (c.32) s.24(2)(d)). A pension paid to a permanently disabled fireman which was calculated, at a special higher rate, by reference to his length of service, was held not to be a “pension payable in respect of disablement or disability” because the amount was calculated solely by reference to length of pension-able service, and took no account of the extent or degree of his disablement (*Miles v Miles* [1979] 1 All E.R. 865).

(Income and Corporation Taxes Act 1970 (c.10) s.181(3).) Regular monthly disability benefits, paid by the trustees of the employer's pension fund to a former employee who had been declared redundant while absent from work through illness, constituted "pension" payments for the purposes of this section. The fact that the payments were made on account of the taxpayer's disability rather than on account of his past services was immaterial (*Johnson v Farquhar* [1992] S.T.C. 11).

Stat. Def., includes lump sum, allowance or gratuity and return of contributions with or without interest or other addition (Coal Industry Act 1994 (c.21) Sch.5 para.1(1)).

See NORMAL PENSION AGE.

PENSION BUSINESS. Stat. Def., Finance Act 2012 s.58.

PENSION SCHEME. Stat. Def., Finance Act 2004 (c.12) s.150.

Stat. Def., Companies Act 2006 s.675.

PENSIONABLE AGE. Stat. Def., equalising pensionable age for men and women at 65, but with complicated transitional savings for the previous earlier pensionable age for women (Pt I of Sch.4 to the Pensions Act 1995 (c.26)) (applied for a number of social security purposes by the Social Security Contributions and Benefits Act 1992 (c.4) s.122(1)).

PENSIONER. In relation to a mutual insurance company or its wholly owned subsidiary, means a person entitled (whether presently or prospectively) to a pension, lump sum, gratuity or other like benefit referable to the service of any person as an employee of the company or subsidiary (Stat. Def., Finance Act 2003 (c.14) s.63(7)).

PENSIONS PROMISE. Stat. Def., Pension Schemes Act 2015 s.5.

Stat. Def., Pension Schemes Act 2015. See also Pension Schemes Act (Northern Ireland) 2016 s.5.

PEOPLE. In a marine insurance, "people" means the people of all nations in their respective collective capacities; and not bodies of insurgents acting in opposition to their rulers. It means the governing power of the country; therefore if a corn vessel is seized and detained by a hungry mob, or a party of rebels, that is not a detention by "the people" (*Nesbitt v Lushington*, 4 T.R. 783; see also *Rotch v Edie*, 6 T.R. 413).

In the application of art.3 of the First Protocol to the European Convention on Human Rights, "people" is capable of being limited to citizens (*R. (Barclay) v Lord Chancellor and Secretary of State for Justice* [2008] EWHC 1354 (Admin)).

See also RESTRAINTS OF KINGS.

PEOPLE OF ENGLAND. In the context of the National Health Service Act 2006, the people of England do not include people such as failed asylum seekers who have no business being in England at all (*R. (Y.A.) v Secretary of State for Health* [2009] EWCA Civ 225).

PEPPERCORN. Rent of a peppercorn is "applicable to a building lease, creating the true relation of landlord and tenant; but inapt in the case of a mining lease (see MINING) which is really, in its essence, rather a sale at a price payable by instalments than a demise properly so called" (per Collins M.R., *Re Aldam* [1902] 2 Ch. 60, cited *FIXED RENT*).

"Rent of a red rose": see *Foljambe v Smith's Brewery Co*, 73 L.J. Ch. 725.

See MONEY VALUE; PAYMENT.

PER. See per Lord Selborne, *Pryce v Monmouthshire Railway*, 4 App. Cas. 216.

"Persons claiming under the propositus by feoffment or inheritance were said to be 'in the per'; whilst those claiming in any other manner, e.g. by the limitation of a use,

as a tenant in dower, as tenant by the curtesy, as the lord taking by escheat or forfeiture, as a recoveror, as a corporation sole taking on the death of his predecessor—were said to be ‘in the post’” (see note by Sir H. Elphinstone, 4 L.Q. 362).

PER AGREEMENT. See AS PER AGREEMENT.

PER ANNUM. A covenanted that if B married his (A’s) daughter, he would pay B £20 “per annum”, without saying for how long; held, that that meant more than for one year only (*Hookes v Swaine*, 1 Sid. 151; 1 Lev. 102; 1 Keb. 511, 517, 555). The report in Siderfin says that the covenant was by A to pay “his son-in-law and daughter”, and that the ruling was that the £20 was payable “pur lour vries, et que le maintenance serra cy lasting que le marriage”. But the other reporters state that the covenant was to pay the son-in-law; and even so, Keble says (p.555) that the conclusion was that the sum was payable “for life; and whichsoever of them that survived shall have it, it being apparent on the record that it was for their maintenance”; Levinz does not report the conclusion.

Directors’ remuneration at so much “per annum”: see *Central de kaap Co*, 69 L.J. Ch. 18, cited YEAR. See also *Re London & Northern Bank* [1901] 1 Ch. 728, and succeeding cases, cited YEAR. Cp. *Emmons v Elderton*, 4 H.L. Cas. 624, cited RETAIN.

“Per annum” means “yearly; not in the year” (per Bramwell B., *Easton v Alce*, 31 L.J. Ex. 115, cited RATE); see also *Bateman v Faber*, 83 L.T. 7, cited INCOME.

See ANNUALLY.

PER AUTRE VIE. See PUR AUTRE VIE.

PER CAPITA. A distribution per capita is when a number of individuals, e.g. a CLASS, even though in different degrees of relationship, take the fund distributable among them in equal shares. Its opposite is per stirpes.

PER MONTH. An agreement to pay so much “per month” for a stated service means that such payment is to be made “each month, or monthly; and gives a cause of action as each month accrues which, once vested, is not subsequently lost or divested by the service-giver’s desertion or abandonment of his contract” (per Pollock C.B., *Taylor v Laird*, 25 L.J. Ex. 329).

“Per month thereafter”: a provision for stay of execution on a judgment debt “provided that 10 be paid on the 1st February, 1940, and 10 per month thereafter”, was held to mean that the second and other instalments were payable not later than the first day of March and of each successive month (*Re A Debtor* [1940] Ch. 470).

FREIGHT “monthly in advance”: see ADVANCE.

See MONTH.

PER MY ET PER TOUT. Joint tenants hold “per my et per tout” (Litt. s.288); “*Et sic totum tenet et nihil tenet*, scil. totum conjunctim, et nihil *per se* separatim” (Co. Litt. 186A).

“In 2 Bl. Com. 182, it is stated that ‘joint tenants are said to be seised *per my et per tout*; by the half, or MOIETY, and by all’. It is true that for certain purposes joint-tenants are potentially seised of aliquot parts of the land held by them in jointure; as for the purpose of alienation in severalty, either by grant (Litt. s.288), or by demise (*Doe v Errington*, 3 N. & M. 647); so, for the purposes of merger (Preston on Merger, 447). And where the joint-tenancy happens to be between two persons only, their potential aliquot parts may, without impropriety, be termed moieties. But this is not, as the learned commentator, followed by numerous subsequent writers, has supposed, implied in the terms ‘per my et per tout’; the term ‘my’ signifying, not ‘a moiety’, but

'not in the least': see the Epitaph on *La Fontaine's* Picard wolf, cited 7 M. & G. 172n. And, therefore, Lord Coke gives the exact force of the expression 'seised *per my et per tout*' by describing the party so seised as one *qui nihil habet et totum habet*.

"Littleton was rightly understood by Howard, who translates or modernises Litt. s.288 thus: 'On dit communément que chaque jointenant n'a la propriété de rien et est propriétaire de tout; ce qui veut dire qu'il tient tout conjointement, et ne tient rien en particulier. En effect, la terre, considérée en sa totalité ou dans chacune de ses parties, ne lui appartient que conjointement avec son associé'—Anciennes Loix des Francois, Vol.1, 362" (note to *Murray v Hall*, 7 C.B. 455).

"Executors are seised of their office *per my et per tout*. Each of them represents the estate for all purposes" (per Kekewich J., *Re Houghton* [1904] 1 Ch. 626).

This phrase is sometimes written "*per mie et per tout*" (1 Watkins on Copyholds (4th edn), 338).

See MOIETY.

PER PROCURATION. The expression "*per procuration*" does not always and necessarily mean that the act is done under procuration. All that it means is this: "I am an agent, not acting on any authority of my own in the case, but authorised by my principal to enter into this contract" (per Pollock C.B., *Smith v M'Guire*, 27 L.J. Ex. 468, citing and commenting on *Attwood v Munnings*, 7 B. & C. 278, and *Alexander v Mackenzie*, 6 C.B. 766).

A signature of a bill of exchange or promissory note "*by procuration*, operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent, in so signing, was acting within the actual limits of his authority" (Bills of Exchange Act 1882 (c.61) ss.25, 89, codifying *Stagg v Elliott*, 12 C.B.N.S. 373); but though not liable on the document, the principal may be liable as for money had and received (*Reid v Rigby* [1894] 2 Q.B. 40), and, semble, a bill or note may be indorsed "*per pro*" so as to give a title to the document although such indorsement may not be in such a mode or under such authority as to render liable the person in whose name the indorsement is made (*Smith v Johnson*, 27 L.J. Ex. 363, cited INDORSED).

See Bills of Exchange Act 1882 s.26, as to when an agent is personally responsible on his signature; see thereon *Nicholls v Diamond*, 9 Ex. 154; *Mare v Charles*, 25 L.J.Q.B. 119. See also *Chapman v Smethurst*, 53 S.J. 340; cp. FOR; *Kettle v Dunster*, 43 T.L.R. 770; *Elliott v Bax-Ironside* [1925] 2 K.B. 301.

PER STIRPES. A distribution of property "*per stirpes* and not *per capita*" means that all the beneficiaries will not, necessarily or probably, take equal shares, but that the property is to be divided into as many parts as there are stocks and each stock will have one, and only one, of such parts, though such stock may consist of many persons whilst another may only consist of one person; e.g. a gift to A for life, remainder to his children living at his death and the issue then living of his then deceased children "*per stirpes* and not *per capita*"; A had six children, five of whom died in his lifetime each leaving issue living at A's death, and one child survived him; the stirpital distribution is into six parts, one of which goes to A's surviving child, and one to and among the issue (however numerous) of each of the five deceased children. Cp. PER CAPITA.

Where a distribution of property amongst a class embracing descendants "*is to be per stirpes*; the principle of representation will be applied through all degrees, children never taking concurrently with their parents (*Ralph v Carrick*, 11 Ch. D. 873). In a case (*Robinson v Shepherd*, 32 Bea. 665, on appeal, 10 Jur. N.S. 53), where the gift

was ‘to the descendants of A and B per stirpes’, Romily M.R., thought A and B were the stirpes in the first instance to be considered, so that the primary division should be into two parts. But Westbury C., held that you must look to the number of families or stirpes descended either from A to B, and existing at the testator’s death, and divide the fund primarily into a corresponding number of parts. However, in a subsequent case, the M.R. acted on his own opinion, which appears to have been acquiesced in (*Gibson v Fisher*, L.R. 5 Eq. 51; see also *Booth v Vicars*, 13 L.J. Ch. 147). If the gift were to the descendants of one person per stirpes, it must necessarily be dealt with on Lord Westbury’s principle” (3 Jarm. (8th edn), 1580).

In *Re Wilson* (24 Ch. D. 664), North J. endeavoured to reconcile *Gibson v Fisher* with *Robinson v Shepherd*, but added, “if I had to choose between them I should follow *Robinson v Shepherd* in preference to *Gibson v Fisher*”. In *Re Wilson* the bequest was upon the determination of a prior estate to such cousins (children of six named aunts and uncles), and such issue of predeceased cousins, living at the period of distribution, as should attain the age of 21 years, or should die under that age, leaving issue, “to take if more than one in a course of distribution, according to the stocks, and not to the number of individuals”, and it was held that under that phrase the property was not divisible into six parts, but into sixteen; because the cousins (sixteen in number), and not the aunts and uncles, were the “stocks”.

There is no presumption against a per capita distribution of the corpus because the income has to be distributed per stirpes (*Re Stone* [1895] 2 Ch. 196).

In modern terms the phrase as a whole can be taken to mean “by family” (*Sammut v Manzi Jnr* [2008] UKPC 58).

PER TESTES. See **TESTE**.

PERAMBULATING. (London CC (General Powers) Act 1927 (c. xxii) s.30.) A street trader was not a “perambulating” trader merely because he moved his barrow, which was fitted with wheels, from one stationary trading position to another place, when he was informed by a police officer that he was committing an offence (*Dott v Holborn BC*, 65 T.L.R. 99).

PERCH. See **ROD**.

PEREMPTED. “An appeal is said by the civilians to be ‘perempted’ when the prescribed time has been suffered to elapse before it has been asserted, or when acts have been done under the decree or order appealed from” (Macpherson’s Privy Council Practice (2nd edn), 15). See hereon Ayliffe’s Parergon, 82.

PEREMPTORY. “Peremptory”, “signifies a final and determinate act, without hope or renewing or altering” (Cowel).

A peremptory challenge of a juror is “used onely in matters criminal, and alledged without other cause than barely the prisoners fancy” (Cowel, *Challenge*); but the Crown has also in some cases the right of peremptory challenge; see hereon Arch. Cr. (32nd edn), 174.

“A peremptory day is when business is to be spoke to at a precise day; but if it cannot be spoken to then, the court, at the prayer of the party concerned, will give a farther day without prejudice to him” (Jacob).

A peremptory mandamus requires the thing to be done absolutely, and to it nothing but a certificate of perfect obedience can be a proper return; see hereon Short and Mellor’s Crown Office Practice (2nd edn), 240.

A peremptory order for time to plead means that the order is final, unless varied by a subsequent order on special circumstances being shown for a further extension (*Falck v Axthelm*, 24 Q.B.D. 176).

“Peremptory sale”: see WITHOUT RESERVE.

PERFECT. A warranty, on sale of a thing to perform a specific work, that it shall be “complete and perfect”, implies, at least under the word “perfect”, that it shall be efficient for that work (*Mallan v Radloff*, 17 C.B.N.S. 588).

“Perfect repair”, semble, does not mean more than “repair” (*Mosse v Killick*, 50 L.J.C.P. 300). See TENANTABLE REPAIR; GOOD REPAIR.

“Perfect abstract”: see ABSTRACT.

“Perfect documents of title”: see DOCUMENT.

PERFECTED. See SIGNED, ENTERED, OR OTHERWISE PERFECTED.

PERFORM. A theatrical or music hall agreement by an actor or singer not to “perform” elsewhere than at the place for which the agreement engages him, generally connotes such a performance as he would give at such place, and does not prevent him from exercising his talents amongst friends gathered together on a Sunday evening for their mutual companionship and entertainment (*Kelly v London Pavilion*, 14 T.L.R. 234).

To broadcast an opera by wireless telephony is to “perform” it in public within the meaning of Copyright Act 1911 (c.46) s.1(2): see *Messenger v British Broadcasting Co* [1929] A.C. 151. See also PERFORMANCE.

See REPRESENTING OR PERFORMING; KEEP. See also DONE; OBSERVANCE OR PERFORMANCE.

PERFORMANCE. Part performance of a contract to take case out of the Statute of Frauds: see *Miller v Sharp* [1899] 1 Ch. 622, and cases there cited; Leake (8th edn), 212, 213, 614, 615.

Such a part performance is where there is “an act unequivocally referring to, and resulting from, the agreement, and such that the party would suffer an injury, amounting to fraud, by the refusal to execute that agreement” (per Grant M.R., *Frame v Dawson*, 14 Ves. 387, applied in *Dickinson v Barrow* [1904] 2 Ch. 339, and in which *Caton v Caton*, 1 Ch. 148, and *McManus v Cooke*, 35 Ch. D. 681, were commented on). Part payment of purchase money, or payment of rent, is not such a part performance (*Maddison v Alderson*, 8 App. Cas. 467; *Thursby v Eccles*, 70 L.J.K.B. 91). See also *Rawlinson v Ames* [1925] 1 Ch. 96.

Where there was a parol agreement to grant a lease with an option to purchase for a specified sum any time during the tenancy, and on the faith of this agreement a man entered into possession and paid rent and then exercised his option to purchase, it was held that the entry into possession was an act of part performance enabling him to give evidence of all terms of the agreement and entitling him to specific performance of it, including the option to purchase: see *Brough v Nettleton* [1921] 2 Ch. 25.

“Performance in public” within the meaning of the Copyright Act 1911 (c.46): see *Harms Ltd v Embassy Club Ltd*, 96 L.J. Ch. 84. See also ss.1, 2 and 35 of the Act; *Messenger v BBC* [1929] A.C. 151, cited PERFORM.

A hotel company in allowing its guests to listen to a wireless set in a public room was held to give a “performance”, within s.35(1) of the Copyright Act 1911, of the works broadcast (*Performing Right Society Ltd v Hammond's Bradford Brewery Ltd* [1934] Ch. 121).

PERFORMANCE

In the following cases there has been held to be public performance: *Performing Right Society v Hawthorns Hotel (Bournemouth)* [1933] Ch. 855 (performance at hotel to which non-residents admitted); *Performing Right Society v Camelo* [1936] 3 All E.R. 557 (loudspeaker in public room of hotel or in room adjoining public room where it could be heard); *Jennings v Stephens* [1936] Ch. 469 (performance by and for members of village institute); *Turner Electrical Instruments v Performing Right Society* [1943] Ch. 167 (diffusion in factory of “music while you work” broadcast).

The words “performance of the craft” in a yacht-building contract cover not only the handling behaviour but also the standard of workmanship and materials, and the compliance with the specifications (*McDougall v Aeromarine of Emsworth* [1958] 1 W.L.R. 1126).

“Performance of the said duties”, see WHOLLY AND EXCLUSIVELY.

Stat. Def., Copyright, Designs and Patents Act 1988 (c.48), s.180.

“Default in performance”: see DONE.

Specific performance: see SPECIFIC.

See DEFICIENT PERFORMANCE; DRAMATIC; FROM PERFORMANCE; IMPOSSIBLE; OBSERVANCE OR PERFORMANCE; PERFORM; PERFORMED; REPRESENTING OR PERFORMING; SUBSTANTIAL PERFORMANCE.

PERFORMANCE OF A PLAY. Stat. Def., Licensing Act 2003 (c.17) Sch.1 para.14.

PERFORMED. No agreement “that is not to be performed” within one year from its making is valid unless evidenced by a signed writing (Statute of Frauds 1677 (c.3) s.4). This means (a) a complete performance, (b) by one of the parties. A contract which contemplates more than a year for its performance is within the statute, though it may be defeasible within the year; and, on the other hand, a contract which does not in terms contemplate more than a year for its performance is not within the statute because it may exceed that limit. See YEAR; NOT TO BE; *Re Alexander’s Timber Co*, 70 L.J. Ch. 767, cited NOTE.

“A negative cannot be performed” (Co. Litt. 303B), referring to which proposition Fry J. said, “the word ‘performance’ is not applicable to negative covenants” (*Evans v Davis*, 48 L.J. Ch. 225), and in another report of that case (10 Ch. D. 757) that learned judge amplified his meaning thus: “I have always understood that ‘non-observance’ refers to the negative covenants, and ‘non-performance’ to the affirmative covenants”. And so Brett L.J., in delivering the judgment of the Court of Appeal in *Hyde v Warden*, 3 Ex. D. 82, said that the court were prepared to hold that the forfeiture there “being only in the event of the lessee wilfully failing or neglecting to perform any of the covenants, does not apply to a breach of a negative covenant”.

That is all clear, but in support of that proposition, *West v Dobb*, L.R. 5 Q.B. 460, was cited. But in *West v Dobb* the words of forfeiture were, in case the lessee “should fail in the observance or performance of any or either of the covenants or agreements” on his part; and, assuming the correctness of the dictum of Fry J., above stated, a negative covenant would be within the word “observance”. This latter word seems, however, not to have been observed. Nor indeed was the point necessary for the decision in *West v Dobb*. Kelly C.B., speaking for himself and Channell B., merely said, “the proviso seems to refer only to a failure in the performance of an affirmative covenant”: but Montague Smith J., said, “I think it quite unnecessary to put a construction upon the words ‘observance or performance of the covenant’”.

And, semble, a clause of forfeiture on “non-performance” of covenants, applies to “non-observance” of negative covenants (*Croft v Lumley*, 6 H.L. Cas. 672).

The Court of Appeal has held that forfeiture of a lease on breach by the lessee of covenants “to be performed” by him, applies to negative, as well as to positive, covenants, e.g. a lessee’s covenant that he will not assign or underlet without licence (*Harman v Ainslie* [1904] 1 K.B. 698; see further DONE).

The usual covenant by an assignee of a lease to “observe and perform” the covenants and conditions of the lease, is only for the purpose of indemnity to the assignor, and gives the latter no right to specific performance in the absence of claim by the lessor (*Harris v Boots* [1904] 2 Ch. 376). Cp. *Re Poole and Clark* [1904] 2 Ch. 173; *Reckitt v Cody* [1920] 2 Ch. 452.

In a covenant in a lease, the word “observe” may have a positive or a negative meaning: where the meaning is positive, it means to comply with an obligation (*Ayling v Wade* [1961] 2 Q.B. 228).

(Building (Safety, Health and Welfare) Regulations 1948 (No.1145) reg.4(ii).) Roofing sub-contractors, who further sub-contracted some of the work to another company, were in control of the work being done by the sub-sub-contractors, and that work was, therefore, being “performed” by them within the meaning of this regulation (*Donaghey v Boulton & Paul* [1968] A.C. 1).

PERFORMING. See DOING; HAVING; PAYING; REPRESENTING OR PERFORMING.

“Performing right”: see Copyright Act 1911 (c.46) Sch.1.

PERIL. See ACCIDENT; RIVER.

“Excepted perils”: see EXCEPTION.

“Other perils”: see OTHER.

PERIL OF THE ROAD. See DANGERS.

PERIL OF THE SEA. This expression describes a proximate cause which might, as a matter of definition, arise with or without negligence (*J Lauritzen A/S v Wijsmuller BV* [1989] 1 Lloyd’s Rep. 148).

PERIOD. A period means a time that runs continuously, e.g. a superannuation or other allowance if an employee has been in the service “for a less period” than 10 years, means 10 continuous years (*Tyler v London & India Docks*, 9 T.L.R. 11). Cp. NOT LESS; TIME.

In a will, “service for a period of five years or upwards” with a particular company meant continuous service, and war service was not included (*Re Marryat* [1948] Ch. 298).

“Period of employment” (Redundancy Payments Act 1965 (c.62) s.6(4)) refers to employment under the contract of employment in relation to which the employee was laid off (*Neepsend Steel and Tool Corp v Vaughan (T.)* [1972] 1 C.R. 278).

“During some specified period of the year” (Agricultural Holdings (Scotland) Act 1949 (c.75) s.2(1)). A seasonal let of a park is a let for grazing “during some specified period of the year”, although no dates are fixed (*Mackenzie v Laird*, 1959 S.L.T. 258).

The “period... reasonably required for carrying out the work” necessary to complete a substantially completed new building within the meaning of para.9 of Sch.1 of the General Rate Act 1967 (c.9) cannot be extended to include the time it takes to find tenants and erect partitioning (*JLG Investments v Sandwell DC* [1978] E.G. 845). And the “period” runs from the date of substantial completion and not from the date of the local authority’s completion notice (*Graylaw Investments v Ipswich BC* [1978] E.G. 880).

PERIOD

“Period during which an activity has been carried out on land . . . began more than twelve months earlier” (Town and Country Planning Act 1971 (c.78) s.90(2), as amended by Town and Country Planning (Amendment) Act 1977 (c.29) s.1(1)). The “period” here referred to is the total period during which the activity has been carried out, and not just the period during which it has been carried out in breach of planning control (*Scott Markets v Waltham Forest LBC* (1979) 38 P. & C.R. 597).

“During a period not exceeding twenty-four hours” (Licensing (Occasional Permissions) Act 1983 (c.24) s.1(1)). “Period” in this section is limited to one continuous period of 24 hours. It does not cover a series of periods notwithstanding that their total does not exceed 24 hours (*R. v Bromley Licensing Justices, Ex p. Bromley Licensed Victuallers’ Association* [1984] 1 All E.R. 794).

“Period . . . on duty” within the meaning of s.103(1) of the Transport Act 1968 (c.73) is a question of fact in each case, and a driver was held not to be “on duty” during two half-hour periods of rest and refreshment (*Carter v Walton* [1978] R.T.R. 378).

“Act extending over a period” (Race Relations Act 1976 (c.74) s.68(7)(b)). A condition of employment by which an employee’s pension entitlement was less favourable than that of other employees was a disadvantage which continued throughout the period of the employment and was therefore an “act extending over a period” within the meaning of this section (*Barclays Bank v Kapur* [1991] 2 W.L.R. 401). But where a black staff nurse complained that she had been discriminated against when her employers reggraded her at a lower grade, with consequent lesser pay than her white comparator, but had not asserted that they had acted in pursuance of a discriminatory policy, the act of which she complained was, for the purposes of s.68(7), once-for-all and did not extend “over a period” (*Sougrin v Haringey Health Authority* [1992] I.R.L.R. 416).

“Period of account” (Finance Act 1981 (c.35) Sch.9). A claim for stock relief for a 104-week period which encompassed periods covered by earlier claims, and had been adopted solely for the purposes of making an out-of-time election for transitional relief under Sch.10, was not a “period of account” within Sch.9 (*Bass Holdings v Money*, *The Times*, March 12, 1993).

Where the executive had power to detain persons pending their removal from the country, it was to be implied that the power could only be exercised during such period as was reasonably necessary to effect removal and that if it became apparent that removal could not be effected within a reasonable time, further detention was not authorised (*Tan Te Lam v Tai Chau Detention Centre* [1996] 2 W.L.R. 863).

“Period of account”: Stat. Def., Income and Corporation Taxes Act 1970 (c.10) s.527(1); Finance Act 1976 (c.40) Sch.5 para.28(1); Finance Act 1984 (c.43) s.48(9).

“Period of childhood and full-time education”: Stat. Def., Administration of Justice (Pensions) Act 1950 (c.11) s.6.

“Period of copyright”: Stat. Def., Copyright Act 1956 (c.74) Sch.VII(10).

“Period of employment”: Stat. Def., Factories Act 1961 (c.34) s.176(1).

“Period of notice”: Stat. Def., Contracts of Employment Act 1963 (c.49) Sch.2 para.1(3).

“Period of ownership”: Stat. Def., Finance Act 1965 (c.25) s.29(13).

“Period of retention” (in relation to profit sharing schemes): Stat. Def., Finance Act 1978 (c.42) s.54(4).

See TRIAL PERIOD.

“Daily working period”: see WORKING.

PERIODIC. “Periodic licence to occupy premises” (Housing Act 1988 (c.50) s.32(1)(A)). A licence under the terms of which an employee was granted exclusive possession of a bungalow belonging to his employer, so that he could better perform the duties of his employment, was a service licence, notwithstanding that the employee was in fact never in a position to perform those duties. It was not a “periodic licence” for the purposes of s.5 of the Protection from Eviction Act 1977 (c.43) (*Norris (trading as J Davies & Son) v Checksfield* (1991) 135 S.J. 542).

PERIODICAL. “Periodical Payment”: a court may order a spouse to make regular payments (Family Law Reform Act 1969 (c.46) s.6(3) as amended by Family Law Reform Act 1987 (c.42) Sch.1).

“Annuity” or sum payable “at stated periods” (Stamp Act 1891 (c.39) Sch.), bond, covenant, or instrument: see *Clifford v Inland Revenue Commissioners* [1896] 2 Q.B. 187, approving and distinguishing *Sweetmeat Co v Inland Revenue Commissioners* [1895] 1 Q.B. 484, cited INSTRUMENT, and *Jones v Inland Revenue Commissioners* [1895] 1 Q.B. 484. *Clifford v Inland Revenue Commissioners*, distinguished in *Lewis v Inland Revenue Commissioners* [1898] 2 Q.B. 290, was followed in *Jackson v Inland Revenue Commissioners*, 87 L.T. 269; *Jones v Inland Revenue Commissioners*, approved in *National Telephone Co v Inland Revenue Commissioners*, 250 [1900] A.C. 1, cited INSTRUMENT.

“Money payable periodically” (Stamp Act 1891 (c.39) s.56): see per Channell J., *Underground Electric Railway v Inland Revenue Commissioners* [1904] 2 K.B. 198, cited CONTINGENTLY; on appeal [1906] A.C. 21, cited MONEY PAYABLE.

PERISH. (Sale of Goods Act 1893 (c.71) s.7). See *Horn v Minister of Food* [1948] 2 All E.R. 1036 (risk of deterioration of potatoes in clamp).

PERISHABLE. Shares in a company, though goods were not “perishable” within R.S.C. old Ord.29 r.4 (*Evans v Davies* [1893] 2 Ch. 216). See PRESERVATION.

Bona peritura from a wreck are such as will not endure for a year and a day (Wreck Act 1275 (c.4)).

PERJURY. “Perjury is an assertion upon an oath duly administered in a judicial proceeding, before a competent court, of the truth of some matter of fact material to the question depending in that proceeding, which assertion the assertor does not believe to be true when he makes it, or on which he knows himself to be ignorant.

“In this definition, the word ‘oath’ includes every affirmation which any class of persons are by law permitted to make in place of an oath.

“The expression ‘duly administered’ means administered in a form binding on his conscience, to a witness legally called before them, by any court, judge justice, officer, commissioner, arbitrator, or other person who by the law for the time being in force, or by consent of the parties, has authority to hear, receive, and examine evidence. The fact that a person takes an oath in any particular form is a binding admission that he regards it as binding on his conscience.

“The expression ‘judicial proceeding’ means a proceeding which takes place in or under the authority of any court of justice, or which relates in any way to the administration of justice, or which legally ascertains any right or liability. A proceeding may be judicial although the person accused in it was brought before the court, by which the proceeding is held, by an irregular warrant.

“The word ‘fact’ includes the fact that the witness holds any opinion, or belief.

PERMANENT

“The word ‘material’ means of such a nature as to affect in any way, directly or indirectly, the probability of any thing to be determined by the proceeding, or the credit of any witness, and a fact may be material although evidence of its existence was improperly admitted” (Steph. Cr. (3rd edn), 93–94—omitted in 9th edn); see also *R. v Baker* [1895] 1 Q.B. 797. Cp. FALSE SWEARING; FORSWORN.

“‘Perjury’ is not a word of art like ‘murder’” (*Ryalls v The Queen*, 11 Q.B. 794). See also FELONY.

See Perjury Act 1911 (c.6) s.1.

PERMANENT. “Permanent” is a relative term, and is not synonymous with “everlasting” (*Henriksen v Grafton Hotel* [1942] 2 K.B. 184, 196).

An advertisement offering “permanent employment” was held not to mean employment for life, but was meant to indicate that any person so employed would be on the general as distinct from the temporary staff (*McClelland v Northern Ireland General Health Services Board* [1957] 1 W.L.R. 594).

“Permanent exhibition to the public” (Theft Act 1968 (c.60) s.11(2)). For the purposes of this section “a collection intended for permanent exhibition to the public” means one intended to be permanently available for that purpose, whether or not it is regularly exhibited as a whole (*R. v Durkin* [1973] 1 Q.B. 786).

“Permanent improvements” (Lunacy Act 1890 (c.5) s.118(1)): see *Re Gist*, 5 Ch. D. 881; [1904] 1 Ch. 398.

“Permanent incapacity”, in Workmen’s Compensation Act 1925 (c.84) s.13: see *Marshall, Sons & Co v Prince* [1914] 3 K.B. 1047; *Carlton Main Collieries v Clawley* [1917] 2 K.B. 691.

“Permanent investment” (old R.S.C. Ord.55 r.2(7)): see *Ex p. Jesus College* [1884] W.N. 37; *Ex p. Bethlehem and Bridewell Hospitals*, 30 Ch. D. 541.

“Permanent loan” (Finance Act 1920 (c.18)): see *Yorkshire Railway Wagon Co v Inland Revenue Commissioners*, 94 L.J.K.B. 134. See also s.52 of the Act.

“Permanent nuisance”, justifying an action by a reversioner, means a nuisance that will continue indefinitely unless something is done to remove it. Thus a building which infringes ancient lights is permanent within the rule. See per Parker J., in *Jones v Llanrwst*, 80 L.J. Ch. 150, in which it was held that works discharging sewage into a river were permanent. See also NUISANCE.

Permanent obstacle, entitling a shipowner to insist on an alternative place of delivery, “means that it is an obstacle which cannot be overcome by the shipowner by any reasonable means except within such a time as, having regard to the objects of the adventure of both charterers and ship-owner, is as a matter of business wholly unreasonable” (per Brett L.J., *Nelson v Dahl*, 12 Ch. D. 593). Cp. IMPRACTICABLE.

“Permanent residence in England”, as a condition subsequent in a will, is one which can be precisely and distinctly ascertained and is therefore valid (*Re Gale, Verrey v Gale* [1952] Ch. 743).

“Shall have ceased permanently to reside therein”, implied that there must be no *animus revertendi*: see *Re Coxen, MacCallum v Coxen* [1948] Ch. 747; [1948] L.J.R. 1590; [1948] 2 All E.R. 492.

“Permanent sickness, or other permanent infirmity”—justifying the reception of a deposition of a witness (Evidence on Commission Act 1831 (c.22) s.10)—did not, in respect of “sickness”, mean an incurable one, but imported such a state of disability as to preclude the hope of the deponent being able, in any reasonable time, to attend the trial (*Beaufort v Crawshay*, L.R. 1 C.P. 699).

“Permanent trusts” (Customs and Inland Revenue Act 1885 (c.51) s.12): see *Att-Gen v Corporation of the City of London* [1913] 1 K.B. 231.

“Permanent way men” (Railway Employment (Prevention of Accidents) Act 1900 (c.27) s.1, Schedule No.12) did not include signal fitters (*London & North Eastern Railway v Berriman* [1946] A.C. 278).

PERMANENT ESTABLISHMENT. Stat. Def., in relation to a company for the purposes of the Tax Acts, Finance Act 2003 (c.14) s.148.

PERMANENTLY. “Permanently displaced” (Land Compensation Act 1973 (c.26) s.29(3A) as amended by the Housing Act 1974 (c.44) Sch.13). A person could be said to have been “permanently displaced” from his dwelling within the meaning of this section where the improvements carried out to the dwelling were so radical as to cause it to lose its original identity (*R. v Islington LBC, Ex p. Casale, The Times*, December 14, 1985).

“The intention of permanently depriving the other of it” (Theft Act 1968 (c.60) s.6(1)). A person who removed a pair of doors from the property of a landlord and fitted them to another property was held to have had “the intention of permanently depriving” the landlord of the doors, notwithstanding that both properties were owned by the same landlord (*DPP v Lavender (Melvyn), The Times*, June 2, 1993).

“Permanently adapted” (Value Added Tax Act 1994 (c.23) Sch.8). An adaptation to a motor vehicle did not have to be either irreversible or such as to preclude other use in order to qualify as being “permanently adapted” and zero-rated for VAT purpose (*Customs and Excise Commissioners v Help the Aged* [1998] R.T.R. 120).

PERMEABILITY. “The permeability of a space is the percentage of that space which can be occupied by water” (Merchant Shipping (Conventions) Act 1914 (c.50) art.V).

PERMISSIBLE MAXIMUM WEIGHT. “Permissible maximum weight” referred to an aggregate of the maximum weight of the vehicle and any trailer in use, in relation to the requirement that a vehicle should be fitted with a tachograph (*Small v DPP* [1995] R.T.R. 95).

PERMISSION. Generally, a required permission involves the idea that the person to grant it may impose limitations, e.g. the “permission” of a committee of inspection (Bankruptcy Act 1883 (c.52) s.57—see Bankruptcy Act 1914 (c.59) s.56), or, there being none, of the Board of Trade (1883 Act s.22(9); Bankruptcy Act 1914 s.20(10)) to employ a solicitor, may impose a maximum on the amount to be paid him (*Re Duncan* [1892] 1 Q.B. 879). Such a “permission” by a committee of inspection must, in some way or other, specify the work to be done; a resolution empowering a trustee to employ a solicitor “where necessary” is too vague (*Re Vavasour* [1900] 2 Q.B. 309). Cp. SANCTION.

“The word ‘permission’ by itself cannot be construed as implying that the permission must be one which there is power to revoke, or can endure only so long as the grantor is in a position to revoke it” (per Lord Dilhorne in *Kelly v Cornhill Insurance Co* [1964] 1 W.L.R. 158). There can be a valid “permission” to drive a car within the terms of an insurance policy eight months after the death of the grantor (*Kelly*). But see *R. v Canadian Motor Lamp Co* [1967] O.R. 484, cited PERMIT, para.(26).

“Act, default, permission, or sufferance”: see *Draper v Sperring*, 10 C.B.N.S. 113; BY WHOSE; PERMIT; SUFFER; DEFAULT.

PERMISSIVE

"Permission" is something which is granted by one person to another, and a police officer cannot give himself "permission" for the purposes of reg.115 of the Motor Vehicles (Construction and Use) Regulations 1973 (SI 1973/24) (*Keene v Muncaster* [1980] R.T.R. 377).

"Consent and permission of the true owner": see CONSENT.

"Special permission": see SPECIAL.

PERMISSIVE WASTE. "Permissive waste is WASTE by reason of omission or not doing—as, for want of reparation" (2 Inst. 145). See also Woodfall (24th edn), 733.

See VOLUNTARY WASTE.

PERMIT. A direction in a will that the trustees in whom the legal estate is vested "shall permit" A "at any time and from time to time to reside at" a stated house constitutes A a tenant for life of the house within Settled Land Act 1882 (c.38) (see now Settled Land Act 1925 (c.18)) (*Re Llanover* [1903] 2 Ch. 16; but see *Re Llanover* [1926] Ch. 626).

Again, to "permit", or to "suffer", was not confined to a passive sense; therefore, under Licensing Act 1872 s.13, a licensed person "permits" drunkenness who supplied with more drink a person who he knew or ought to have known was drunk (*Edmunds v James* [1892] 1 Q.B. 18; but see TAKE PLACE); on the other hand, that was so if he allowed such a person to remain on his premises, even though no liquor was served there to such person (*Hope v Warburton* [1892] 2 Q.B. 134). The above prohibition against gaming extended to the licensed person himself and his private friends (*Patten v Rhymer*, 29 L.J.M.C. 189; *Hare v Osborne*, 34 L.T. 294); but the licensed person who was himself drunk could not, under s.13, be convicted of "permitting" drunkenness (*Warden v Tye*, 2 C.P.D. 74; cp. LICENSED PREMISES). The hour of closing had nothing to do with the offence of permitting drunkenness in other people: see *Thompson v Mackenzie* [1908] 1 K.B. 905; *Lawson v Edminson* [1908] 2 K.B. 952. See also *Radford v Williams*, 110 L.T. 195.

The term of a tenancy required the tenant "not to do or permit to be done... anything which may be... a nuisance". It was held that in this context "permit" means to give leave for an act which without that leave could not be legally done, or to abstain from taking reasonable steps to prevent the act where it is within a person's power to prevent it (*Commercial General Administration v Thomsett* (1979) 250 E.G. 547).

In a clause of forfeiture on alienation, the word "permit" means the same as suffer (per James L.J., *Ex p. Eyston*, 7 Ch. D. 145).

"Permitting and suffering" (in a covenant) do not bear the same meaning as 'knowing of and being privy to'; the meaning of them is that the covenantor should not concur in any act over which he had control" (per Bayley J., *Hobson v Middleton*, 6 B. & C. 303); nor does that phrase mean "to hinder and forbid" (per Lopes L.J., *Hall v Ewin*, 37 Ch. D. 74). See also per Cotton and Lindley L.JJ., *Martin v Spicer*, 55 L.T. 824. So, in the phrase "do or suffer", "suffer" is used in a passive sense as contradistinguished from "do" (*Roffey v Bent*, L.R. 3 Eq. 759).

A covenantor does not merely by selling land "permit" building on it in breach of a covenant, even if he knew that the purchaser intended to develop it for housing (*Sefton v Tophams* [1967] 1 A.C. 50). See also *Leicester (Earl of) v Wells UDC* [1972] 3 W.L.R. 486.

The word “permit” connotes an authorisation by a person who has at least a de facto control (*Broad v Parish*, 64 C.L.R. 588). But see *Kelly v Cornhill Insurance Co*, cited PERMISSION.

An advertising agent, merely as such, was not rateable for the hoarding exhibiting his advertisements, because he was not the person who “permits” the land to be so used within Advertising Stations (Rating) Act 1889 (c.27) s.3 (*Burton v St. Giles* [1900] 1 Q.B. 389). See also EXCLUSIVE OCCUPATION.

A person “permits or suffers” that which he can prevent or might have prevented; therefore, if an owner, bound by a restrictive covenant, lets the premises for the prohibited purpose (or, semble, does not impose the restriction on his lessee), he “permits or suffers” a user contrary to the restriction (*Holloway v Hill* [1902] 2 Ch. 612).

To “permit” the user of a dwelling-house otherwise than as such: see *Berton v Alliance Economic Investment Co Ltd* [1922] 1 K.B. 742, distinguished in *Atkin v Rose* [1923] 1 Ch. 522.

To “permit” the use of a theatre for a performance within the meaning of Copyright Act 1911 (c.46) ss.1, 2: see *Performing Right Society v Caryl Theatrical Syndicate* [1924] 1 K.B. 1.

(Theatres Act 1843 (c.68) s.15.) An appellant who took every precaution to warn the actors to adhere strictly to the text of a play and the stage directions had not “caused” a play to be presented with an unauthorised addition (*Lovelace v DPP* [1954] 1 W.L.R. 1468).

“Causes or permits any invoice, or description, of the article sold by him to be false in any material particular to the prejudice of the purchaser” (Fertilizers and Feeding Stuffs Act 1893 (c.56) s.3(1)(b)): “‘to be false’ there, does not mean ‘corruptly false’, but ‘untrue’; ‘causes’ does not create difficulty, because that word would prima facie refer only to a person taking a part in the act. But the legislature has put in the wider word ‘permits’, which was inserted in order to include the case in which a description, false in fact, has been sent out by the permission of the person whose goods are being sent out with it, or who is the manager of the works from which the goods are being sent out” (per Alverstone C.J., *Korten v West Sussex CC*, 72 L.J.K.B. 514); or he could be said to have “permitted” the invoice to be “false” if he took no steps whatever to ascertain whether or not it was true (per Channell J., *Korten*). See that case and *Laird v Dobell* [1906] 1 K.B. 131, cited KNOWINGLY.

“Will not permit any sale by public auction”: see *Toleman v Portbury* (L.R. 5 Q.B. 288), where it was held that a sale in which the lessee took no part, but which was made under a bill of sale he had given, was not “permitted” by him, and accordingly there was no breach of the covenant. But in a subsequent action between the same parties it was additionally proved that one of the terms of the bill of sale was a power enabling the grantee, on default, to sell the goods on the premises “by private contract or public auction”, and then it was held that the lessee had “permitted” the auction in breach of his covenant, which breach had worked a forfeiture (*Toleman v Portbury*, L.R. 7 Q.B. 344). “I should say that, prima facie, the meaning of the words ‘do or suffer to be done’” (or, as it is suggested, “do or permit to be done”) “is that they must involve the doing of some act, or some abstention from action, by the covenantor himself, or by some person standing in the relation of agent to him, a relation which does not exist as between lessor and lessee” (per Collins M.R., *Wilson v Twamley* [1904] 2 K.B. 105, citing *Toleman v Portbury*, L.R. 5 Q.B. 288). In *Wilson v Twamley*

it was held that an act by a sub-lessee which caused the non-renewal of licensed premises was not an act "done or suffered to be done" by the lessee ([1904] 2 K.B. 99). See *WILFULLY*. Cp. *Harman v Ainslie* [1904] 1 K.B. 698, cited *DONE*, and see *Atkin v Rose* [1923] 1 Ch. 522, explaining these cases.

The phrase "permit and suffer" the hirer of a cabin in a ship to stow baggage in the hold, imports that the hirer shall make some request for space (*Corbyn v Leader*, 6 C. & P. 32).

To "permit" cruelty to an animal: see Protection of Animals Act 1911 (c.27) s.1; *Whiting v Ivens*, 84 L.J.K.B. 1878.

"Causes or permits" (Road Traffic Act 1972 (c.20) ss.40, 44, 143). To be guilty of causing or permitting the use of a vehicle contrary to the requirements of the Motor Vehicles (Construction and Use) Regulations 1973 (SI 1973/24) there must be proof of mens rea of knowledge of the facts which make the user unlawful (*Ross Hillman v Bond* [1974] Q.B. 435; *P Lowery & Sons v Wark* [1975] R.T.R. 45). If an owner lends his car on condition that the person he lends it to shall first insure it, he is not guilty of permitting it to be driven without insurance under this section (*Newbury v Davis* [1974] R.T.R. 367). But if the owner lends it under the honest and mistaken belief that the driver is covered by insurance, he will be guilty of "permitting" under this section (*Baugh v Czado* [1975] R.T.R. 453). An employer "permits" the use of a vehicle when it is driven by an employee, even though he is a silent partner in the taxi firm concerned (*Passmoor v Gibbons* [1979] R.T.R. 53). But to be guilty he has to be the employer of the driver; he does not "use" or "cause or permit" the use of the vehicle within the meaning of these sections if the driver is his partner (*Bennett v Richardson* [1980] R.T.R. 358). The voluntary supervisor of an uninsured learner driver with a provisional licence had no power to stop the learner from driving and could not therefore be guilty of "permitting" him to drive contrary to s.143 (*Thompson v Lodwick* [1983] R.T.R. 76).

"Permit a person employed by him" (Road Traffic Act 1960 (c.16) s.73(1)(c)). An employer cannot "permit" one of his drivers to exceed the permitted hours of continuous driving if it is done without his knowledge or suspicion (*Grays Haulage Co v Arnold* [1966] 1 W.L.R. 534).

"Cause or permit" (Road Traffic Act 1972 (c.20) s.84(2) as amended by Road Traffic (Drivers' Ages and Hours of Work) Act 1976 (c.3) Sch.1 para.1(a)). The same principles apply as those under s.143(1), and an honest belief that a driver has a driving licence is no defence to a charge of permitting an unlicensed person to drive contrary to s.84(2) if that person does not in fact hold a valid licence (*Ferrymasters v Adams* [1980] R.T.R. 139).

"Permit any other person to use" (Road Traffic Act 1960 (c.16) s.201(1)). The essence of permitting is knowledge and therefore a firm of motor deliverers were not guilty of "permitting" the use of a car by one of its drivers who used it for his own purposes in the course of delivery, and thus invalidated the insurance (*Sheldon Deliveries v Willis* [1972] R.T.R. 217).

"Permits" (Motor Vehicles (Construction and Use) Regulations 1951 (No.2101) reg.101; 1967 (No.1753) reg.2): "cause" involves some degree of dominance or of control or some express or positive mandate; "permits" means giving leave and licence to somebody. Thus the phrase did not cover a case where a garage proprietor delivered to an owner a van defectively repaired (*Shave v Rosner* [1954] 2 Q.B. 113). The phrase covers a case where a master requests or allows a friend to use a vehicle:

see *James & Son v Smee* [1955] 1 Q.B. 78. Knowledge for the vehicle's defects is immaterial (*Clark v Hunter*, 1956 S.L.T. 188; *Mackay Brothers & Co v Gibb*, 1969 S.L.T. 216).

The owner of a bus "causes or permits" it to be used in contravention of s.134(3) of the Road Traffic Act 1960 (c.16) even if he is unaware of the fact that the payment of fares is being made to the company hiring it (*Wurzal v Wilson* [1965] 1 W.L.R. 285).

A covenantor is not, by the action of selling land, in breach of a covenant not to "cause or permit" building on it, even if he knew that the purchaser intended to develop it for housing (*Sefton v Tophams* [1967] 1 A.C. 50).

"Permit" (Caravan Sites and Control of Development Act 1960 (c.62) s.1) means to allow someone else to use land as a caravan site, and would not cover the position of an occupier who did so through his own user (*Waddell v Winter*, 65 L.G.R. 370). If an owner takes reasonable steps to remove unlicensed caravans from his land he will not be "permitting" them to remain, even if he has stopped short of the use of force or of taking legal proceedings (*Bromsgrove DC v Carthy* (1975) 30 P. & C.R. 34).

"Permits" (Dangerous Drugs Act 1965 (c.15) s.5(a)). An occupier "permits" the use of cannabis under this section only if he knows or has grounds for suspecting that the premises will be so used (*Sweet v Parsley* [1970] A.C. 132), and, if he has reasonable grounds for suspicion, then only if he shows an unwillingness to prohibit the act. It is a defence to the charge to show that he put up a notice threatening to call in the police if there was any indication of drugs on the premises (*R. v Souter* [1971] 1 W.L.R. 1187).

"Knowingly permits" (Misuse of Drugs Act 1971 (c.38) s.8). The addition of the word "knowingly" in this section to the wording of s.5 of the Dangerous Drugs 1965 (c.15), which it replaces, is superfluous in that knowledge of one kind or another is essential to permission (*R. v Thomas*; *R. v Thomson* (1976) 63 Cr.App.R. 65).

"Permitted the contravention" (Transport Act 1968 (c.73) s.96(11)). An employer who paid a fee to a self-employed traffic manager was nevertheless held to have "permitted" a driver to exceed the hours of continuous driving permitted by this section, as the knowledge of the traffic manager could be imputed to the employer (*Worthy v Gordon Plant (Services)* [1989] R.T.R. 7).

A transport manager, who issued repeated written warnings to drivers time and again that they were in breach of Council Regulation 3820/85 arts 6(1) and 7(1) without ensuring that the warnings were carried on to the next stage of disciplinary action "permitted" the contravention contrary to the Transport Act 1968 (c.73) s.96(11A) (*Light v DPP* [1994] R.T.R. 396).

"Permit any other person to use a motor vehicle" (Road Traffic Act 1988 (c.52) s.143(1)(b)). Where the owner lent his car on condition that the person he lent it to found someone to drive it who was properly insured it was held that the imposition of that condition was insufficient to avoid the owner's strict liability under this section of permitting an uninsured person to drive the vehicle, even though he was at the time unaware that the person found to drive the car was uninsured (*DPP v Fisher* [1991] Crim.L.R. 787).

"So far as the law will permit": see SO FAR AS.

See CAUSE OR PERMIT; PERMISSION; SUFFER; USE OR PERMIT; ALLOW; PROVIDED THE FUNDS PERMIT; WILFULLY.

PERMITTED. For the meaning of "permitted" in the context of s.151 of the Road Traffic Act 1988, see *Lloyd-Wolper v Moore* [2004] 1 W.L.R. 2350.

PERMITTED

PERMITTED HOURS. “Permitted” hours for the sale of intoxicating liquors: see Licensing Act 1964 (c.26) s.60; see also *Smith v Fennel*, 93 L.J.K.B. 311.

PERMITTED LIEN. “In my view it is very unlikely that the parties to the Lease intended the definition of ‘Permitted Lien’, by its reference to obligations which were not overdue, to prevent all liens which arise in the ordinary course of business from having any effect. But if, on the construction which I favour, the phrase ‘obligations which are not overdue’ is a reference to the circumstances at the inception of the transaction which gives rise to the lien, the provision is not a nonsense. The Lessee would be in breach of contract if it transferred possession of an engine to another when it owed money to that other and enabled that person to assert a lien in respect of a pre-existing debt.” (*Wilmington Trust Company v Rolls-Royce Plc* [2011] Scot. C.S. CSOH 151.)

PERMITTING. “Wind, weather, and tide permitting”: see *Hawes v South Eastern Railway*, 54 L.J.Q.B. 174. See AT ALL TIMES OF TIDE.

“Weather permitting”: for the effect of this phrase in construing a despatch clause, see *The Glendevon* [1893] P. 269.

PERNOR. A pernor of the profits of land is one who enjoys the profits and is the same as a cestui que use (*Chudleigh’s Case*, 1 Rep. 123).

The pernor of the rents and profits means the taker—not necessarily the person who in fact takes them, but the person who is entitled to take them (per Darling J. in *Cundiff v Fitzsimmons* [1911] 1 K.B. 513, cited TERRE TENANT).

PERPETRATE. See COMMIT.

PERPETUAL. See PERMANENT; PERPETUITY.

PERPETUAL ADVOWSON. A devise of a “perpetual advowson”, prior to the Wills Act 1837 (c.26), only passed a life estate (*Pocock v Lincoln (Bishop)*, 3 Brod. & B. 27). Cp. LIVING.

PERPETUAL CURATE. “Permanent, or perpetual, curates, are clerks who officiate in parishes or districts to which they are nominated by the impropiators, and licensed by the bishop” (Phil. Ecc. Law, 239). See hereon *Greenslade v Darby*, L.R. 3 Q.B. 421; *Mason v Lambert*, 12 Q.B. 795.

See CURATE; MINISTER.

PERPETUAL DEBENTURES. See Companies Act 1948 (c.38) s.89.

PERPETUITIES (RULE AGAINST). Stat. Def., Perpetuities and Accumulations Act 2009 s.1.

PERPETUITY. The rule against perpetuities required that gifts and limitations of property must necessarily vest in the beneficiaries during a life or any number of lives, in being at the time when the instrument became operative (e.g. in the case of a will, the death of the testator), or within 21 years afterwards. See *Re Wilmer* [1903] 1 Ch. 874. But see Perpetuities and Accumulations Act 1964 (c.55) and *Re Drummond* [1988] 1 W.L.R. 234.

The rule against perpetuities applies to any property which is attempted to be tied up for a longer period than the rule allows, unless the purpose be a charity, e.g. it applies to a legacy for the perpetual repair of a testator’s tomb when such tomb is not a part of the fabric of a church (*Hoare v Osborne*, L.R. 1 Eq. 585, cited CHURCH), or for such repair of a picture (*Re Gassiot*, 70 L.J. Ch. 242); see also *Re Chardon* [1928] 1 Ch. 464.

The rule against perpetuity “has no application to covenants which run with the land, because they are so annexed to the land as to create something in the nature of an interest in the land” (per Farwell J., *Muller v Trafford* [1901] 1 Ch. 61); see hereon *Woodall v Clifton*, above.

“The rule against perpetuity has no application whatever to personal contracts. If authority is necessary for that, *Witham v Vane* (Challis, 401) is a direct authority of the House of Lords; and an even stronger case is that of *Walsh v Secretary of State for India* (32 L.J. Ch. 585)” (per Farwell J., *Borland's Trustee v Steel* [1901] 1 Ch. 289).

“Lease in perpetuity”: see LEASE; RENEWAL.

PERQUISITE. “Profits arising to the lord from his court baron above the yearly revenue, such as fines in respect of copyholds; Perkins, 20, 21. *Perquisitum* is also used in the sense of purchase; Spelm., *Perquisitum*; Bracton, 1.2, c.30, n.3” (Elph. 615, 616).

“Perquisites’ are advantages and profits that come to a manor by casualty, and not yearly, as escheats, hariots, relieves, waives, estraies, forfeitures, amerciements in courts, wards, marriages, goods and lands purchased by villeines of the same manor, fines of copyholds, and divers other like things that are not certaine, but happen by chance, sometimes more often than at other times. See Perkins, f. 20 and 21” (Termes de la Ley).

Cowel defines “perquisite” as “anything gotten by a mans own industry or purchased with his own money, different from that which descends to him from his father or ancestors”, citing Bracton, 1. 2, c.30, n. 3, and 1. 4, c.22.

“Perquisites”, as used in Income Tax Act 1842 (c.35) Sch.E r.1, might have included a gratis residence by an employee in his employer’s house, although the employee could not sublet it, but for the fact that that construction was prevented by r.4 of the same schedule which defined “perquisites”, for all purposes of the Act, to be “such profits of offices and employments as arise from fees and other emoluments, and payable either by the Crown or by the subject in the course of executing such offices or employments” (per Lord Watson, *Tennant v Smith* [1892] A.C. 150, cited INCOME). See also *McDonald v Shand* [1923] A.C. 337; distinguished, *Dauncey v Howlett*, 135 L.T. 279; per Stirling L.J., *Herbert v McQuade* [1902] 2 K.B. 631, cited PROFITS; distinguished, *Seymour v Read* [1927] A.C. 554.

Perquisite means personal advantage, and as used in Sch.2 para.1 of the Finance Act 1956 (c.54) was held to include the use of a car given to an employee in return for a wage reduction (*Heaton v Bell* [1970] A.C. 728), but not a mileage allowance paid to a doctor who travelled from his home to a hospital where he was on stand-by duties for emergencies (*Owen v Pook* [1970] A.C. 244).

PERRY. See CIDER.

PERSECUTION. (United Nations Convention 1951.) “Persecution” should be given its ordinary English meaning (*Kagama v Secretary of State for the Home Department* [1997] Imm. A.R. 137).

For the purposes of art.1A(2) of the Convention and Protocol relating to the Statutes of Refugees (1951—Cmd.9171 and 1967—Cmd.3906), whether ill-treatment amounts to persecution depends not only on the severity of the ill-treatment but also upon there being a failure by the state to afford protection against the ill-treatment (*Horvath v Secretary of State for the Home Department* [2000] 3 W.L.R. 379, HL (criticised in *New Law Journal*, July 21, 2000, p.1120)).

“The question in this appeal is the meaning of the term ‘refugee’ in the Refugee Convention. That in turn raises the question of what is meant by ‘persecuted’. [Counsel] says that if people are subjected to punishment which would be regarded as discriminatory by reference to their fundamental human rights, they are being persecuted. If those fundamental rights relate to their religious beliefs or political opinions, then they are being persecuted for reasons of those beliefs or opinions. My Lords, I have not attempted to examine all aspects of these propositions but for present purposes I am content to accept them.” (*Sepet v Secretary of State for the Home Department* [2003] 1 W.L.R. 856 at 875, HL.)

For the circumstances in which a homosexual person has a valid fear of prosecution for the purposes of the Refugee Convention, see *H.J. (Iran) v Secretary of State for the Home Department* [2010] UKSC 31.

PERSIST. See INSIST.

PERSISTENT. “Is leading persistently a dishonest or criminal life” within the meaning of Prevention of Crime Act 1908 (c.59) s.10(2)(a): see *R. v Turner* [1910] 1 K.B. 346, and *Lord Advocate v Gillam* [1910] S.C. (J.) 84.

“Persistently to solicit” (Sexual Offences Act 1956 (c.69) s.32). A card in a shop window advertising “services” can be persistent for the purposes of this section (*R. v Burge* [1961] Crim. L.R. 412). “Persistently” connotes a degree of repetition of the importuning; either more than one invitation to one person or a series of invitations to different people (*Dale v Smith* [1967] 1 W.L.R. 700).

Whether a parent has “persistently” failed to discharge his parental obligations within the meaning of the Adoption Act 1958 (c.5) s.5(2) (now Children Act 1975 (c.72) s.12(2)(c)) is a question of fact and degree, and it was held in this case (perhaps incorrectly) that “persistently” is to be understood in the sense of permanently” (*Re D. (Minors) (Adoption by Parent)* [1973] Fam. 209). A doctor’s report, in the absence of any oral evidence, can be sufficient basis on which to conclude that there had been “persistent ill-treatment” within the meaning of s.12(2)(e) (*Re A. (A Minor)* (1979) 10 Fam. Law. 49).

“Persistently in default” (Companies Act 1948 (c.38) s.188(1)(b); as amended by Companies Act 1981 (c.62) s.93; now Companies Act 1985 (c.6) s.297(1)). Repeated failure by a liquidator to comply with the “relevant requirements” as to the filing of returns and accounts was sufficient to amount to his being “persistently in default”, notwithstanding that at no stage was an enforcement order made or a conviction obtained. Culpability is irrelevant. “Persistently” connotes some degree of continuance or repetition either in the same default or in a series of defaults. In this case 27 defaults in two years was held to amount to persistent default (*Re Arctic Engineering* [1986] 1 W.L.R. 686).

“Persistence” meant a degree of repetition by more than one invitation to a person or invitations to different persons (*R. v Tuck* [1994] Crim.L.R. 375).

“The word ‘persistent’ in section 129A(3)(b) of the [Highways Act 1980] is an ordinary English word, commonly understood to mean ‘continuing or recurring; prolonged’, that does not require further definition.” (*Ramblers’ Association v Coventry City Council* [2008] EWHC 796 (Admin) at para.21.)

PERSON. Even before the passing of the Interpretation Act 1889 (c.63) it was considered that prima facie the word “person”, in a public statute, included a corporation as well as a natural person (*Pharmaceutical Society v London &*

Provincial Supply Association, 5 App. Cas. 857; see also *R. v Gardner*, Cowp. 79; *Cortis v Kent Water Works Co.*, 7 B. & C. 314; *Meath v Winchester*, 3 Bing. N.C. 207; Interpretation Act 1889 (c.63) ss.2, 19).

So, where trustees of a will had power to grant leases to “any person or persons” they should think fit, Chitty J. held that this authorised them to grant a lease to a limited company (*Re Jeffcock*, 51 L.J. Ch. 507).

So, where a Railway Act provided that “any person” acting in pursuance of it should be entitled to notice of action, it was held the company itself was included (*Boyd v London & Croydon Railway*, 7 L.J.C.P. 241); see also *St. Helens Tramway Co v Wood*, 56 J.P. 71.

In Dentists’ Act 1878 (c.33), “person” related only to a natural person, and did not include a corporation of an incorporated company (*O’Duffy v Jaffe* [1904] 2 I.R. 27, cited with approval by Palles C.B., *R. v Registrar of Joint Stock Companies* [1904] 2 I.R. 640); but that case shows that a company taking the title of “dentist” as part of its own title, is not, with such a title, entitled to be registered under the Companies Act 1862 (c.89) (see Companies Act 1948 (c.48)). And the court will restrain a company from representing that they carry on the business of dentists in succession to a person who has been struck off the dentists’ register for professional misconduct, or from taking any name implying that they are registered under the Dentists Act or are persons specially qualified to practise dentistry: see *Att-Gen v Smith Ltd* [1909] 2 Ch. 524; but see Dentists Act 1957 (c.28) s.39.

An incorporated company is a “person” within Trustee Act 1925 (c.19) s.36(1) (*Re Thompson* [1905] 1 Ch. 229); and also within Food and Drugs (Adulteration) Act 1928 (c.31) s.30 (see *Chuter v Freeth & Pocock* [1911] 2 K.B. 832).

In *Wilmot v London Road Car Co Ltd* [1910] 2 Ch. 525, it was held that “a respectable and responsible person” within the meaning of a covenant included a corporation such as a limited company.

As an incorporated company cannot appear personally, it is not a “person” entitled to vote when the voting has to be done personally, e.g. where it is provided that no proxy shall be admitted (*Wills v Tozer*, 20 T.L.R. 700).

A company is a “person of full age” within the meaning of these words as used in Settled Land Act 1925 (c.18), and Law of Property Act 1925 (c.20): see *Re Carnarvon’s Settled Estates*, 96 L.J. Ch. 49.

As “person” includes a corporate body, a corporate body may be appointed a trustee of a registered friendly society (*Re Pilkington Bros. Workmen’s Pension Fund* [1953] 1 W.L.R. 1084).

“Person” (Landlord and Tenant Act 1927 (c.36) ss.23(1), 25(1)). The word person in s.23(1) of the Act was wide enough to include a company incorporated under the Companies Acts (*Stylo Shoes v Prices Tailors* [1960] Ch. 396).

“Any person” (Foreign Tribunals Evidence Act 1856 (c.113) s.1) may include a corporation which, though unable to give evidence on oath, may be ordered to produce documents which must be specified in the order (*Penn-Texas Corp v Murat Anstalt* [1964] 1 Q.B. 40).

“One person” (Restrictive Trade Practices Act 1956 (c.68) s.21(1)(d)). These words cannot include a subsidiary (*Daily Mirror Newspapers v Gardner* [1968] 2 Q.B. 762).

“Person” (Sunday Observance Act 1677 (c.7) s.1). As a modern limited company is incapable of public worship, and was a creature of law unknown in 1677, it is not a

“person” within this section in spite of s.2(1) of the Interpretation Act 1889 (c.63) (*Rolloswin Investments v Chromolit* [1970] 1 W.L.R. 912).

“Person . . . who uses on a road” (Road Traffic Act 1972 (c.20) s.40(5)). “Person” includes a company, which can therefore be guilty of using a vehicle with defective brakes (*William Swan & Co v Macnab*, 1978 S.L.T. 192).

“Person” (Law of Property Act 1925 (c.20) s.164(1)). It was held that, as the original Accumulations Act 1800 (c.98) was intended to be confined to natural persons, on a true construction of s.164(1) a corporate settlor (in this case a company which entered into a trust deed for the benefit of its employees) was not a “person” and not therefore subject to the rule against accumulations (*Re Dodwell & Co’s Trust* [1979] Ch. 301).

“Person having control” (Finance Act 1965 (c.25) Sch.7 para.15(2)). “Person” can here mean “persons”, as the provisions of this paragraph were held to extend to a case where two or more persons had control of a company, and the making and implementation of the scheme amounted to the exercise of control (*Floor v Davis* [1979] 2 W.L.R. 830).

A bank was held to be a “person” for the purposes of s.21(1) of the Limitation Act 1939 (c.21) (*Welch v Bank of England* [1955] Ch. 508).

“Person claiming to be entitled” (National Debt Act 1958 (c.6) s.4(1)). Where the holder of National Development Bonds named a Bank as payee on an application for their encashment, the Bank was a “person claiming to be entitled” within the meaning of this section (*R. v Chief Registrar of Friendly Societies, Ex p. Mills* [1970] 1 W.L.R. 1534).

“Any person” (Land Transfer Act 1897 (c.65) s.1(1)) did not include the Crown (*Re Hartley* [1899] P. 40).

“Person” (Administration of Estates Act 1925 (c.23) s.46(1)) includes the Crown (*Re Mitchell, Hatton v Jones* [1954] Ch. 525).

“Person” in Sch.D Cases I and II r.11(2) of the Income Tax Acts includes the Crown (*Madras Electric Supply Corporation v Boarland* [1955] A.C. 667; [1955] 2 W.L.R. 632; [1955] 1 All E.R. 753). But it was held not to be a “person” within the meaning of r.21 of the Income Tax All Schedules Rules (*IRC v Whitworth Park Coal Co* [1958] Ch. 792).

The Attorney-General, acting ex officio, was not a “person” within the Real Property Limitation Act 1833 (c.27); but an action by him on behalf of the poor of a parish might be statute barred, as these constituted “a class of persons” within s.1 (*Att-Gen v Magdalen College*, 23 L.J. Ch. 844; *Magdalen College v Att-Gen*, 6 H.L. Cas. 189). The Ecclesiastical Commissioners were “persons” within ss.1 and 2 of the Act just cited, except in cases where they claimed (by virtue of Ecclesiastical Commissioners Act 1840 (c.113) s.57, through an ecclesiastical corporation (*Ecclesiastical Commissioners v Rowe*, 49 L.J.Q.B. 771; 5 App. Cas. 736). See also *James & Son v Smea* [1955] 1 Q.B. 78).

Information obtained by the Law Society in the course of an application for a legal aid certificate is prohibited from disclosure to the court, since “person” in s.14(1)(a) of the Legal Aid and Advice Act 1949 (c.51), does not include the court or a judge (*Whipman v Whipman* [1951] 2 All E.R. 228).

A duty to surcharge “any person” for a loss incurred by a county council under s.228(1)(d) of the Local Government Act 1933 (c.51), means only members of the county council (*Re Dickson* [1948] 2 K.B. 95).

A fluctuating body like a sub-committee may be a "person appointed" to hear representations under the Agriculture Act 1947 (c.48) (*R. v Minister of Agriculture and Fisheries, Ex p. Graham* [1955] 2 Q.B. 140).

"Person who receives the rents" (General Rate Act 1967 (c.9) s.24). A managing agent of a house in multiple occupation, who collected rents on behalf of the owners and was responsible for paying the rates, was the "person who received the rents" for the purposes of this section (*Arsenal Football Club v Smith* [1977] 2 W.L.R. 974).

"Persons" (Rating Act 1971 (c.39) s.4(2)(b)(ii)) refers to a multiplicity of persons and not to one singular person (*Prior (V.O.) v Sovereign Chicken* [1984] 2 All E.R. 289).

"Person" in Offences Against the Person Act 1861 (c.100) s.4, included an unborn child provided it was subsequently born alive: see *R. v Shephard* [1919] 2 K.B. 125.

"Any person" (Variation of Trusts Act 1958 (c.53) s.1(1)(d)) includes an unborn or unascertained person (*Re Turner's Will Trusts, Bridgman v Turner* [1960] Ch. 122).

The "person" by whom an employee was employed for the purpose of the definition of "employer" in s.153(1) of the Employment Protection (Consolidation) Act 1978 (c.44) could include not only that individual in his capacity as sole proprietor of a business, but also that same individual in another capacity, that of partner in another business (*Capron v Capron, The Times*, February 5, 1985).

"No person unlicensed shall sell by retail intoxicating liquors" (Licensing Act 1872 (c.94) s.3) did not include one who was "merely an innocent servant", e.g. the bar-keeper of the Kitchen Committee of the House of Commons (*Williamson v Norris* [1899] 1 Q.B. 7). See also *Reckover v Defries*, 23 T.L.R. 20.

"Person who sells" (Licensing Consolidation Act 1910 (c.24) s.69(2)) held to include a barman or other person who performed the act of transferring liquor to a purchaser, and not merely to apply to the licence holder or the person to whom the liquor belonged: see *Caldwell v Bethell* [1913] 1 K.B. 119.

"Person disposing of property" (Law of Property Act 1925 (c.20) s.183) includes a mortgagor (*District Bank v Luigi Grill* [1943] Ch. 78).

"Person holding office under His Majesty" (Official Secrets Act 1911 (c.28) s.2(1)) includes every police officer (*Lewis v Cattle* [1938] 2 K.B. 454). See also ANY.

"Person being a child or other issue of the testator" (Wills Act 1837 (c.26) s.33) meant a person or persons named, as distinguished from a class (*Olney v Bates*, 3 Drew. 319; *Browne v Hammond*, Johns. 210; *Re Harvey* [1893] 1 Ch. 567).

"Person in his capacity as master" (Merchant Shipping (Liability of Shipowners and Others) Act 1958 (c.62) s.3(2)) can include an owner acting as master (*Coldwell-Horsfall v West Country Yacht Charters* [1968] P. 341).

"Persons" (Obscene Publications Act 1959 (c.66) s.1(1)) "cannot mean all persons; nor can it mean any one person... On the other hand, it is difficult to construe 'persons' as meaning the majority of persons or the average reader... This court is of the opinion that the jury should have been directed to consider whether the effect of the book was to tend to deprave and corrupt a significant proportion of those persons likely to read it" (*R. v Calder & Boyars* [1969] 1 Q.B. 151).

"Person who... is homeless" (Housing (Homeless Persons) Act 1977 (c.48) s.4(1)). The duty of a local authority under this section to find accommodation for a homeless "person" extends to any homeless person lawfully in the country, whether he has any local connection with the area or not (*R. v Hillingdon LBC, Ex p. Streeting* (1981) 79 L.G.R. 167).

PERSON

“Some other person” (Housing (Homeless Persons) Act 1977 (c.48) s.6(1)(c)). A person outside the jurisdiction, as for example a community welfare officer in Eire, can be a “person” for the purposes of this section (*R. v Bristol City Council, Ex p. Browne* (1980) 78 L.G.R. 32).

“Person who or whose case is before the court” (Justices of the Peace Act 1968 (c.68) s.1(7), as amended by Administration of Justice Act 1973 (c.15) s.19(1) Sch.5). The victim of an assault, who was not called as a witness when his assailant, on being prosecuted, agreed to be bound over, was not a “person who is before the court” within the meaning of this section, and could not therefore himself be bound over (*R. v Swindon Crown Court, Ex p. Pawittar Singh* [1984] 1 W.L.R. 449).

“Exposing his person” (Vagrancy Act 1824 (c.83) s.4). “Person” as here used is not limited to private parts. It includes such parts of the body as would be liable to insult by exposure in a wilful, lewd and obscene manner (*Norton v Rowlands* [1971] C.L. 2384). But in *Evans v Ewels* [1972] 1 W.L.R. 671, the Divisional Court held that “person” in this section is a genteel way of saying penis, and that other parts of the body may be exposed, even with insulting intent, without contravening the Act.

A group of people controlling more than one company can be a “person” within the meaning of s.153(4) of the Employment Protection (Consolidation) Act 1978 (c.44) (*Harford v Swiftrim* (1987) 84 L.S.Gaz. 820).

“The person having control of the house” for the purposes of s.9(1A) of the Housing Act 1957 (c.56) (as inserted by Housing Act 1969 (c.33) s.72, now Housing Act 1985 (c.68) s.190) is not the person entitled to the freehold reversion but is he who is entitled to receive the hypothetical rack rent. To determine who that might be the court had to consider the actual estates in the property, and where, as here, ground rent was less than the rack rent, it would be the occupying tenant who would receive the rack rent, and it was therefore he who would be the “person having control” for the purposes of this section (*Pollway Nominees v Croydon LBC* [1986] 2 All E.R. 849). A long leaseholder would qualify as the person having “control” for the purposes of this section (*R. v Lambeth LBC, Ex p. Clayhope Properties* [1987] 3 All E.R. 545). But a statutory tenant of a flat in a house in disrepair was held not to be the “person having control of the house” for the purposes of this section (*White v Barnet LBC* [1989] 3 W.L.R. 131).

“Person within the jurisdiction” (R.S.C. Ord.49 r.1(1)). A woman who agreed to accept service of *garnishee* proceedings on her solicitors was a “person within the jurisdiction” for the purposes of this rule, notwithstanding that she had left the jurisdiction by the time the order nisi was made (*SCF Finance Co v Masri (No.3) (Masri, Garnishee)* [1987] 1 All E.R. 194).

The word “person” in reg.11(c) and (d) of the Supplementary Benefit (Conditions of Entitlement) Regulations refers only to a natural person and not a corporate or unincorporate body such as the local authority (*Decision No.R (S.B.) 2/87*).

“A person, an institution or any other body” (Child Abduction and Custody Act 1985 (c.60) Sch.1 art.3) would, in proceedings under this Act, include the court itself (*Re J. (a Minor)* (1989) 133 S.J. 876).

(Child Abduction Act 1984 (c.37) s.2(1).) Children who were deflected by some action from that which they were doing with parental consent were removed from the lawful “control” of their parents without necessarily involving a geographical removal (*R. v Leather* (1994) 98 Cr.App.R. 179).

"Person" (Development Land Tax Act 1976 (c.24) s.28(1)(3)). As no contrary intention is indicated an unincorporated association is a "person" for the purposes of this section, following the definition in Sch.1 to the Interpretation Act 1978 (c.30) (*Worthing Rugby Football Club Trustees v IRC* [1987] 1 W.L.R. 1057).

"Person likely to be caused harassment, alarm or distress" (Public Order Act 1986 (c.64) s.5(1)). A police constable could be such a "person" for the purposes of this section (*DPP v Orum* [1988] 3 All E.R. 449). It is possible for a person to be caused "harassment, alarm or distress" within the meaning of this section in circumstances where he is concerned for the safety of some person other than himself (*Lodge v DPP* [1989] C.O.D. 179).

"Such person as may be so specified" (Matrimonial Causes Act 1973 (c.18) s.23(1)(f)). The Accountant General was a "person" as well as an office for the purposes of this section and could order funds paid into court to be administered by the court funds' office (*F. v F. (Financial Provision)* [1990] 2 F.L.R. 374).

"No person shall drive" (Greater London Council (Restrictions of Goods Vehicles) Traffic Order 1985). A limited company cannot be a "person" within the meaning of this Order (*Richmond upon Thames LBC v Pinn and Wheeler* (1989) 133 S.J. 389).

"Any person" (Transport Act 1982 (c.49) s.36(1)) can include an unincorporated association (*R. v Clerk to the Croydon Justices, Ex p. Chief Constable of Kent* [1989] Crim.L.R. 910).

"Where a person dies in consequence of personal injuries sustained by him" (Damages (Scotland) Act 1976 (c.13) s.1(1)). A foetus is not a "person" for the purposes of this section (*Hamilton v Fife Health Board, The Times*, January 28, 1992).

"Person lawfully acting in the execution of this Act" (Immigration Act 1971 (c.77) s.26(1)(c)) would include an entry clearance officer (*R. v Secretary of State for the Home Department, Ex p. Saffummensah (Kwadwo)* [1991] Imm.A.R. 43).

"Person making the payment" (Income and Corporation Taxes Act 1988 (c.1) s.203(1)). A third party paying emoluments to a person with whom there was no employer-employee relationship was a "person making the payment" for the purposes of this section and was therefore required to make deductions of tax at source under Sch.E (*Booth v Mirror Group Newspapers* [1992] S.T.C. 615).

"The person carrying out the work" (Building Regulations 1985 (SI 1985/1065) reg.14(3)) could be the owner of the premises if he had authorised and commissioned the work. The regulation does not necessarily apply solely to the person who physically carried out the work (*Blaenau Gwent BC v Sabz Ali Khan, The Times*, May 4, 1993).

"Persons . . . charged with the duty of investigating offences" (Police and Criminal Evidence Act 1984 (c.60) s.67(9)). A store detective could be such a person (*R. v Bayliss* (1994) 98 Cr.App.R. 235).

A supervisory manager for the Bank of England was not a "person charged with the duty of investigating offences" within the meaning of the Police and Criminal Evidence Act 1984 (c.60) s.67(9) (*R. v Smith (Wallace)* [1994] 1 W.L.R. 1398).

(Housing Act 1985 (c.68) s.75.) The ordinary and natural meaning of "person" is "living person", excluding an unborn child (*R. v Newham LBC, Ex p. Dada* [1995] 3 W.L.R. 540).

"Any person" within the meaning of the Licensing Act 1964 (c.26) s.20A included bodies corporate and incorporate (*R. v Maidstone Crown Court, Ex p. Harris* [1994] C.O.D. 514).

The phrase “a person representing a party” in the Immigration Appeals (Procedure) Rules 1984 (SI 1984/2041), r.44(1)(e) applied to the person held out by the party to the appeal as being his representative (*R. v Immigration Appeal Tribunal, Ex p. Flores (Ruiz Pablo)* [1995] Imm.A.R. 85).

A body responsible for laying sound boards at the time of refurbishment could be the “person responsible” for a nuisance under the Environment Protection Act 1990 (c.43) s.80 even though subsequently it had no right of entry into the premises from which the nuisance emanated or into where the noise was having an effect (*Network Housing Association Ltd v Westminster City Council* 93 L.G.R. 280).

A deceased person was not a “person” within the meaning of the Criminal Appeal Act 1968 (c.19) ss.1 and 9 (*R. v Kearley (No.2)* [1994] 3 All E.R. 246).

(Housing Act 1985 (c.68) s.75.) An unborn child was a “person who might reasonably be expected to reside with a pregnant homeless woman” for the purposes of s.75 (*R. v Newham LBC, Ex p. Dada* [1995] All E.R. 522).

(Housing Act 1985 (c.69) Sch.24.) A “person” in Sch.24 Pt II meant the claimant and joint claimants would both have to occupy the property during the qualifying period (*Hussain v Blackburn BC* [1997] 37 R.V.R. 36).

(Children and Young Persons Act 1933 (c.12) s.39.) A child, who was the victim of an alleged criminal act, which gave rise to criminal proceedings, was a person “in respect of whom criminal proceedings were taken” (*Re R. (A Minor) (Wardship: Restrictions on Publication)* [1994] 3 W.L.R. 36).

“Person from abroad” (Income Support (General) Regulations 1997 reg.21(3)(h)). A letter from the Home Office requesting a foreign national to make arrangements to leave the country, but which did not affect their immigration status until all appeals had been exhausted and a deportation order made did not make its addressee a “person from abroad” for the purposes of eligibility for income support under reg.21(3)(h) (*R. v Secretary of State for Social Security, Ex p. Remilien* [1997] 1 W.L.R. 1640).

A letter which required a foreign national to leave the country but which stated that no steps to deport would be taken and so that foreign national did not come within Sch.7(h) of the 1987 Regulations, which stated that “a national of a member state . . . is required by the Secretary of State to leave the United Kingdom” and was not entitled to income support (*Remilien v Secretary of State* (see above) distinguished) (*R. v Oxford Social Security Appeal Tribunal, Ex p. Wolke* [1996] 8 C.L. 643).

(Industrial Tribunals Act 1996 (c.17) s.11.) The fact that someone may be embarrassed by allegations did not, without more, make him a “person affected by” an allegation of sexual misconduct so that he would be entitled to an order restricting the reporting of proceedings in an industrial tribunal (*R. v London (North) Industrial Tribunal, Ex p. Associated Newspapers Ltd, The Times*, May 13, 1998).

An industrial tribunal had the power to make a restricting order binding on a body corporate under the Industrial Tribunals Act 1996 (c.17) s.11 (*M. v Vincent* [1998] I.C.R. 73).

For two contexts in which “person” was held not to include a body corporate see *Daichi Pharmaceuticals UK Ltd v SHAC* [2004] 1 W.L.R. 1503, Q.B.D. and *Haringey LBC v Marks & Spencer* [2004] 1 W.L.R. 1742, Q.B.D.

Stat. Def.: The most important statutory definition of “person” is that in Sch.1 to the Interpretation Act 1978 (c.30). That provision, which applies to more or less all primary and subordinate legislation, defines “person” as including “a body of persons corporate or unincorporate”. So clubs and informal organisations will generally be

persons for the purposes of statute, despite lacking legal personality. When necessary statute will use the term “individual” to connote a “real” person, and the term “natural person” is sometimes used for the same purpose (see, for example, Carers (Recognition and Services) Act 1995 (c.12) s.2(3)). Note also that statute sometimes enables legal personality to be conferred on non-persons: see, for example, the Northern Ireland Arms Decommissioning Act 1997(c.7) s.7(2).

As used in statute the term “person” did not include the successors to a legal person’s rights and liabilities (*R. (National Grid Gas Plc (previously Transco Plc) v Environment Agency* [2007] UKHL 30, reversing [2006] EWHC 1083 (Admin)).

For a case in which the context (participation) limited the legal meaning of “person” to natural persons, see *Canterbury Hockey Club v Revenue and Customs Commissioners* (C-253/07) [2009] 1 C.M.L.R. 13 ECJ.

“Person to whom... a sum is due” (Insurance Companies Act 1982 (c.50) s.96(1)(b)): see POLICYHOLDER.

“Person absolutely entitled”: see ABSOLUTELY ENTITLED.

“Person aggrieved”: see AGGRIEVED.

“In person or by proxy”: see PROXY.

“Person absolutely entitled”: see ABSOLUTELY ENTITLED.

“Person acting”: see ACTING.

“Person aggrieved”: see AGGRIEVED.

“Persons belonging to a ship”: see BELONGING.

“Person by whose act”, etc. nuisance arises: see BY WHOSE; PERMISSION.

“Person detained”: see LAWFULLY DETAINED.

“Person driving”: see DRIVE; DRIVER; DRIVING.

“Person employed”: see EMPLOYED.

“Persons having interests” (Finance Act 1965 (c.25) s.42(2)): see INTEREST.

“Person insured”: see INSURED.

“Person interested in any property”: see INTERESTED IN.

“Person interested in the land”: see INTERESTED IN.

“Person licensed”: see LICENSED PERSON; RENEWAL.

“Person making any distress”: see DISTRESS.

“Person making payment”: see MAKE PAYMENT.

“Persons named”: see NAMED.

“Person nominated”: see NOMINATED.

“Person offending”: see OFFENDING.

“Person purporting to act”: see PURPORT.

“Person supplied”: see SUPPLIED.

“Person who has superintendence”: see SUPERINTENDENCE.

For discussion of what is needed to amount to a contrary indication to the rule in the Interpretation Act 1978 that “person” includes an unincorporated association, see *R. v L.* [2008] EWCA Crim 1970. See also *Hibbins v Hesters Way Neighbourhood Project*, Unreported October 16, 2008, EAT.

See ANOTHER PERSON; ANY PERSON; OTHER PERSON.

See EVERY; INDIVIDUAL; OTHER; PARTY; PERSON ENTITLED; PERSON IN CHARGE; PERSON INTERESTED; UNSOUND MIND; YOUNG PERSON.

PERSON AGGRIEVED. “Person aggrieved” (Trade Marks Act 1938 (c.22) s.26(1)). An applicant for rectification of the Register of Trade Marks might be a “person aggrieved” by an entry in the register, and hence have locus standi,

PERSON

notwithstanding that he had sought relief wider than that to which he was entitled (*Re Warrington Inc's Application*, *The Times*, February 9, 1987). The efforts of the proprietor of a trade mark to discourage firms from selling the goods of an applicant for rectification of the Trade Marks Register did not make the applicant a "person aggrieved" within the meaning of this section (*Bach Flower Remedies Trade Mark* [1992] R.P.C. 439).

(Trade Marks Act 1938 (c.22) ss.11, 15(1), 38, 39(1)(a); Copyright Act 1911 (c.46) s.5.) A person in the same trade as the registered proprietor of the mark in question who is prevented from lawfully doing something which he would otherwise have been unable to do had the mark not been registered is a "person aggrieved" (*AUVI Trade Mark* [1995] F.S.R. 288).

"Person aggrieved" (Public Health Act 1936 (c.49) s.301). A local authority against whom justices had awarded the costs of a hearing was a "person aggrieved" within the meaning of this section and therefore entitled to appeal to the Crown Court (*Cook v Southend BC* (1989) 133 S.J. 1133).

"Person aggrieved" (Public Health Act 1936 (c.49) s.99). A person could not be a "person aggrieved" under this section in relation to a whole building where the statutory nuisance of which he complained related only to the flat which he occupied (*Birmingham DC v McMahon* (1987) 19 H.L.R. 452).

"Person aggrieved" (London CC (General Powers) Act 1947 (c. xlvi) s.64) does not include a local council licensing authority (*R. v Southwark Crown Court, Ex p. Watts* [1990] 88 L.G.R. 86).

"Person... aggrieved" (Town and Country Planning Act 1971 (c.78) s.245). A successor in title to land subject to a planning appeal could be a person "aggrieved" for the purposes of challenging the planning decision under this section (*Times Investment v Secretary of State for the Environment* (1990) 3 P.L.R. 111). A local authority is a "person aggrieved" and has the right of appeal from the justices where the decision has been adverse to the contentions of the authority, and where the matter is not criminal in nature (*Cook v Southend BC* [1990] 2 Q.B. 1).

"Person aggrieved" (Criminal Justice Act 1988 (c.33) s.159(1)(b)). A journalist excluded from two criminal trials while the judge in each case heard an application by counsel in chambers, was not a "person aggrieved" within the meaning of this section. It would not be right, where the public is excluded, to make an exception in favour of the press (*Re Cook (Timothy)* [1992] 2 All E.R. 687).

See ACT; AGGRIEVED.

PERSON BROUGHT BEFORE A COURT. Where a local authority took care proceedings in respect of a child, it was held that the mother, who applied for legal aid so as to be represented by a solicitor, was neither a "person... brought before a juvenile court" within the Legal Aid Act 1974 (c.4) s.28(3)(a), nor a "party to proceedings" within the meaning of s.2(4) (*R. v Worthing Justices, Ex p. Stevenson* (1976) 120 S.J. 333).

PERSON CHARGED. (Summary Jurisdiction Act 1879 (c.49) s.44.) A person is charged if accused of some felony or misdemeanour (see per Humphreys J., in *Arnell v Harris* [1945] K.B. 60, 63).

"Person... charged" (Judges' Rules (1964) r.3) includes a person not yet charged but who has been told that he is going to be charged (*Conway v Hotten* [1976] 2 All E.R. 213).

A co-defendant who has been acquitted is not a “person charged” within the meaning of the Criminal Evidence Act 1898 (c.36) s.1, and is therefore compellable as a witness (*R. v Conti* (1973) 58 Cr.App.R. 387).

PERSON CHARGED IN THE SAME PROCEEDINGS. A co-defendant who pleads guilty is not a person charged in the same proceedings (*R. v Finch* [2007] EWCA Crim 36).

PERSON DEALING WITH A COMPANY. A shareholder receiving bonus shares is not thereby a person “dealing with a company” for the purpose of s.35A(1) of the Companies Act 1985 (*EIC Services Ltd v Phipps* [2004] EWCA Civ 1069).

PERSON ENTITLED. “Person entitled” to money charged upon land (Real Property Limitation Act 1874 (c.57) s.8—see Limitation Act 1939 (c.21) s.24): see ACKNOWLEDGMENT; CHARGED UPON; PAYMENT; *Hervey v Wynn*, 22 T.L.R. 93.

“Person entitled to any reversion expectant on the determination” of a tenancy for life (Prescription Act 1832 (c.71) s.8) is not limited to an owner of the whole reversion, but includes a tenant at will to such an owner (per Fry J., *Laird v Briggs* [1880] W.N. 205).

“Person entitled to an estate or interest in remainder or reversion in such property” (Finance Act 1900 (c.7) s.11): see *Att-Gen v Lane-Fox* [1924] 2 K.B. 498.

“Person entitled to the income of land”: see *Re Earl of Stamford and Warrington* [1927] 2 Ch. 217.

“Person for the time being entitled to receive the rents and profits of the land” within the meaning of the Agriculture Holdings Act 1923 (c.9)—see now Agricultural Holdings Act 1948 (c.63) s.94: see *Tombs v Turvey*, 93 L.J.K.B. 785; *Richards v Pryse* [1927] 2 K.B. 76.

Section 141(2) of the Law of Property Act 1925 (c.20), in authorising “the person from time to time entitled” to land comprised in a lease to recover the rent reserved, does not refer to a person beneficially entitled to the income under a trust of the lease. It does include a mortgagor in possession (*Schalit v Joseph Nadler Ltd* [1933] 2 K.B. 79).

The words “a person entitled under any enactment to an exemption from income tax” in s.4(2) of the Finance (No.2) Act 1955 (c.17) included a person resident in the Republic of Ireland entitled to exemption under s.349 and Sch.XVIII to the Income Tax Act 1952 (c.10) (*Collco Dealings v IRC* [1962] A.C. 1).

A receiver of premises who went into occupation, realised what assets he could, and then vacated, was held to be still the “person entitled to possession” and therefore the “owner” within the General Rate Act 1967 (c.9) Sch.1 (*Banister v Islington LBC* (1972) 71 L.G.R. 239).

See ABSOLUTELY ENTITLED; ENTITLED; ENTITLED TO REDEEM; ENTITLED TO VOTE.

PERSON IN AUTHORITY. It is an established principle of evidence that any confession is receivable unless there has been some inducement held out by some “person in authority”. The owner of a house which has been burgled and from which articles have been stolen is a “person in authority” for the purposes of this principle (*R. v David Wilson*; *R. v Marshall-Graham* [1967] 2 Q.B. 406).

PERSON IN CHARGE. A pilot, by “compulsion of law”, was not a “person in charge” within Merchant Shipping Act Amendment Act 1862 (c.63) s.33 (*The Queen*, L.R. 2 A. & E. 354). See now Merchant Shipping Act 1894 (c.60) s.422.

In *Animals (Transit and General) Order 1912* cl.12, made under the Diseases of Animals Act 1894 (c.87), these words did not include a railway company: see *North Staffordshire Railway v Waters*, 30 T.L.R. 121, cited PERMIT. See *Transit of Animals Order 1927* cl.12.

See CHARGE OR CONTROL.

PERSON INTERESTED. A tenant, against whom the landlord had issued a writ claiming forfeiture for breaches of covenant, was, in applying to have the covenants discharged under the Law of Property Act 1925 (c.20) s.84, a “person interested” within the meaning of that section notwithstanding the landlord’s claim that the lease had been determined by the issue of the writ (*Driscoll v Church Commissioners* [1957] 1 Q.B. 330).

“Person interested” (Land Charges Act 1925 (c.22) s.17(3)). Registration on the register of local land charges of a compensation notice under s.28 of the Town and Country Planning Act 1954 (c.72) made the Minister of Housing and Local Government a “person interested” within the meaning of s.17(3) (*Stock v Wanstead and Woodford BC* [1962] 2 Q.B. 479).

The Law Society is a “person interested” under County Court Rules Ord.16 r.13(2) in relation to money paid as damages for injury to a legally aided infant plaintiff (*Law Society v Rushman* [1955] 1 W.L.R. 681).

“Person interested” (Companies (Consolidation) Act 1908 (c.69) s.223—see Companies Act 1948 (c.38) s.352): see *Re Spottiswoode* [1912] 1 Ch. 410.

“Person . . . interested” (Companies Act 1948 (c.38) s.352) held not to cover the solicitor of a client who sought the restoration of a defunct company’s name to the register so that it might be made a defendant in an action (*Re Roehampton Swimming Pool* [1968] 1 W.L.R. 1693). A person who has been purportedly appointed liquidator of a company which had already been dissolved is a “person interested” for the purposes of this section (*Re Wood and Martin (Bricklaying Contractors)* [1971] 1 W.L.R. 293).

“Persons interested”, in a contract of indemnity: see *The Riverman* [1928] P. 33.

The right of inspection of the accounts of local authorities conferred by s.247(4) of the Public Health Act 1875 (c.55) (see now Local Government Act 1933 (c.51) s.224) on “persons interested” is not merely a personal right; it may be exercised by an agent of a person interested (*R. v Bedwellty Urban DC* [1934] 1 K.B. 333).

“Person interested in the estate of the deceased” (Judicature Act 1925 (c.49) s.164(1)) includes the trustee in bankruptcy of a universal legatee and devisee (*In the goods of Rosse* [1934] P. 29).

“Person interested in the charity” (Charities Act 1960 (c.58) s.28(1)). A person who could not in any circumstances be a beneficiary of a charity, or take any interest under the trusts applicable to the property of the charity, could not be a “person interested” in that charity within the meaning of this section (*Bradshaw v University College of Wales, Aberystwyth* [1988] 1 W.L.R. 190). To qualify as a “person interested” a person generally needed to have an interest in the charity concerned materially greater than or different from that possessed by ordinary members of the public (*Richmond upon Thames LBC v Rogers* [1988] 3 W.L.R. 513).

“Any person interested” (Law of Property Act 1925 (c.20) s.30.) A person entitled to a charging order on the share of a co-owner in the proceeds of sale of land has a proprietary interest in that share and is, therefore, a “person interested” within the meaning of this section (*Midland Bank v Pike* [1988] 2 All E.R. 434).

“Person interested in the property” (Insolvency Act 1986 (c.45) s.316). An original tenant who has assigned a lease is not a “person interested” in it for the purposes of this section (*MEPC v Scottish Amicable Life Assurance Society; Eckley (Third Party)* [1993] 5 C.L. 219).

The Secretary of State was “a person interested in” the restoration of a company to the register under the Companies Act 1985 (c.6) s.651 in the necessary performance of his statutory duties in the regulation of companies (*Re Townreach (No.002081 of 1994); Re Principle Business Machines* [1994] 3 W.L.R. 983).

See INTERESTED IN; PARTY INTERESTED. Cp. AGGRIEVED.

PERSON WHO PUBLISHES. “1. Is a newspaper editor a person who publishes the contents of the newspaper? Most media law specialists would be likely to respond to the question with puzzlement. In civil claims for libel or misuse of private information editors are often sued as publishers of articles that are complained of. The law attributes responsibility for what is published to a wide variety of those involved in the process, and editors are usually involved enough for responsibility to attach. In this appeal by case stated, however, the question arises in the context of a criminal charge of contravening a reporting restriction imposed under s.39 of the Children & Young Persons Act 1933. The issue is whether Parliament intended when enacting s.39 that a newspaper editor should be exposed to criminal liability under the section. . . .

40. In my judgment the natural, ordinary and most obvious interpretation of the phrase ‘any person who publishes’ is that it refers to any person, natural or legal, who takes such a part in the process of publishing the matter that contravenes the direction or prohibition that it can properly be said of them that they ‘publish’ the matter. As a matter of practice, and using language in its ordinary sense, the commercial publisher of the newspaper will invariably be one such person, but it does not by any means follow that such a publisher is the only person who will qualify. Nor does the wording used in the subsection so indicate. On the contrary, in my view it is a natural and not a forced reading of the expression ‘any person who publishes’ to regard it as encompassing others responsible for bringing about the publication of the particular matter in question, including (assuming the particular facts of the case justify this conclusion) the editor in charge of the newspaper at the relevant time, and the journalist who wrote the matter. . . .

51. I have asked myself whether there might be a meaningful distinction to be drawn between holding a person responsible for publication and describing them as a ‘person who publishes’. However, I do not consider that there is any such distinction, in this legal context. In my judgment it is clear that principles of common law which were long-established by 1933 held that editors and, I would add, proprietors were within the range of persons responsible for the publication of what appeared in their newspapers, and who would aptly be described as persons who published such content. . . .

68. For the reasons I have given, my answer to the question posed by the case stated is that the editor of a newspaper does not as a matter of law fall outside the scope of the expression ‘any person who publishes’ in s.39(2) of the 1933 Act. I put it that way because, in contrast to most of the other statutory provisions we have examined in the course of this case, the 1933 Act does not deem an editor to be guilty of an offence if his newspaper publishes in contravention of its provisions. To make out the offence under s.39 against any person the prosecution would need to prove so that the magistrates were sure that the defendant’s conduct on the particular occasion was such

PERSONAL

that he published the matter that creates the contravention.” (*Aitken v Director of Public Prosecutions* [2015] EWHC 1079 (Admin).)

PERSONAL. For examples of this word qualifying the whole of a testamentary gift, so as to exclude realty therefrom, see *Belaney v Belaney*, 2 Ch. 138; *Jones v Robinson*, 3 C.P.D. 344.

“Special cause personal to the licensed person” (Licensing Act 1874 (c.49) s.26): see *Sharpe v Wakefield* [1891] A.C. 173, cited DISCRETION.

PERSONAL ACTION. “‘Action personal’ is such as one man brings against another on any contract for money or goods, or on account of any offence or trespass; and it claims a debt, goods, chattels, etc. or damages” (Jacob, *Action*; see also 3 Bl. Com. 117). Cp. REAL ACTION. See hereon *Att-Gen v Churchill*, 10 L.J. Ex. 314.

An action for infringement of a patent was clearly a “personal action” within County Courts Act 1888 (c.43) s.56 (per Pollock B., *R. v Halifax County Court* [1891] 2 Q.B. 263, cited FRANCHISE). So, of an action against a tenant for double value for holding over (*Wickham v Lee*, 12 Q.B. 521). But it has frequently been decided that foreclosure is not a personal action (per Romer J., *Kibble v Fairthorne*, 64 L.J. Ch. 186).

PERSONAL CARE. (Registered Homes Act 1984 (c.23) ss.1, 20.) The fact that residents of a residential care home did not receive assistance with bodily functions did not prevent them from being persons who required or were provided with “personal care” within the meaning of this Act (*Harrison v Cornwall CC* (1991) 90 L.G.R. 81).

PERSONAL CHARACTERISTIC. “‘Personal characteristics’ is not a precise expression and to my mind a binary approach to its meaning is unhelpful. ‘Personal characteristics’ are more like a series of concentric circles. The most personal characteristics are those which are innate, largely immutable, and closely connected with an individual’s personality: gender, sexual orientation, pigmentation of skin, hair and eyes, congenital disabilities. Nationality, language, religion and politics may be almost innate (depending on a person’s family circumstances at birth) or may be acquired (though some religions do not countenance either apostates or converts); but all are regarded as important to the development of an individual’s personality (they reflect, it might be said, important values protected by articles 8, 9 and 10 of the Convention). Other acquired characteristics are further out in the concentric circles; they are more concerned with what people do, or with what happens to them, than with who they are; but they may still come within article 14 (Lord Neuberger instances military status, residence or domicile, and past employment in the KGB). Like him, I would include homelessness as falling within that range, whether or not it is regarded as a matter of choice (it is often the culmination of a series of misfortunes that overwhelm an individual so that he or she can no longer cope). The more peripheral or debateable any suggested personal characteristic is, the less likely it is to come within the most sensitive area where discrimination is particularly difficult to justify.” (*R. (RJM) v Secretary of State for Work and Pensions* [2008] UKHL 63 per Lord Walker of Gestingthorpe at para.5). See also, “Further, while reformulations are dangerous, I consider that the concept of ‘personal characteristic’ (not surprisingly, like the concept of status) generally requires one to concentrate on what somebody is, rather than what he is doing or what is being done to him.” (*R. (RJM) v Secretary of State for Work and Pensions* [2008] UKHL 63 per Lord Neuberger of Abbotsbury at para.45.)

PERSONAL CHATTELS. Stat. Def., Administration of Estates Act 1925 (c.23) s.55(x). See also: *Swanley Coal Co v Denton* [1906] 2 K.B. 873; *Re Reynolds Will Trusts*, *Dove v Reynolds* [1966] 1 W.L.R. 19; *Re Crispin's Will Trusts*; *Arkwright v Thurley* [1975] Ch. 245.

Stat. Def., Administration of Estates Act 1925 s.55(1)(x) amended by Inheritance and Trustees' Powers Act 2014 s.3.

PERSONAL CIRCUMSTANCES. On the fine construction of s.42(1) of the Rent (Scotland) Act 1971 (c.28), a tenants' right to possession is a "personal circumstance", and the capital value of premises when determining a fair rent shall, therefore, be calculated on the basis of vacant possession (*Mason v Skilling* [1974] 1 W.L.R. 1437).

PERSONAL CONDUCT. See PROFESSIONAL CONDUCT.

PERSONAL DANGER. See DANGER.

PERSONAL DATA. As used in Directive 95/46 "personal data" "undoubtedly covers the name of a person in conjunction with his telephone coordinates or information about his working conditions or hobbies" (*Lindqvist* [2004] 1 C.M.L.R. 20, ECJ).

Not all information retrieved from a computer against an individual's name or unique identifier will be personal data within the Data Protection Acts. The information must relate to a person's privacy in personal, family, business or professional life (*Durant v Financial Services Authority* [2003] EWCA Civ 1746, CA).

Despite the limitations on the meaning of "personal data" in the Data Protection Act 1998, some of the discretionary restrictions under the Act might properly have a wider application (*Johnson v Medical Defence Union Ltd* [2004] EWHC 2509, Ch).

Once anonymised, data ceases to be "personal data" for the purposes of the Data Protection Act 1998 (*Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47).

See *Durant v Financial Services Authority* [2003] EWCA Civ 1746; and New Law Journal, October 19, 2007, p.1450.

"The concept of personal data in Directive 95/46/EC was considered at length by an advisory working party to the Commission, constituted under Article 29 of the directive ('the Article 29 working party'). Its Opinion 4/2007 on the concept of personal data was adopted in June of 2007. It states that the objective was to reach a common understanding on the concept of personal data. It noted that the proposal of the European Commission for a directive had been amended to meet the wishes of the European Parliament, that the definition of personal data should be as general as possible so as to include all information concerning an identifiable individual. It also noted the objective of the rules in the directive as being to protect individuals. The working party stated that the better option was not to restrict unduly the interpretation of the definition of personal data, but rather to note that there was considerable flexibility in the application of the rules to the data. National authorities should endorse a definition which was wide enough so that it would catch all 'shadow zones' within its scope, while making legitimate uses of the flexibility contained in the directive. The text of the directive invited a development of policy which combined a wide interpretation of the notion of personal data and an appropriate balance in the application of the directive's rules." (*R. (on the application of the Department of Health) v Information Commissioner* [2011] EWHC 1430 (Admin).)

PERSONAL DELIVERY. At a town council meeting for the election of aldermen the chairman requested the town clerk to collect the voting papers and hand them to him; the town clerk walked round to the councillors and received their voting papers which he immediately handed to the chairman who could, and did, see what was done and that each councillor was a person entitled to vote; held, that there was a "personal delivery" to the chairman of the voting papers within Municipal Corporations Act 1882 (c.50) s.60(4) (*Baxter v Spencer*, 64 L.J.Q.B. 644). The word "personal" is not used in the corresponding s.22(3) of the Local Government Act 1933 (c.51).

PERSONAL DISCHARGE. The receiver of the estate of a beneficiary of unsound mind was able to give the beneficiary's personal discharge for income received under a trust (*Re Oppenheim's Will Trusts* [1950] Ch. 633).

PERSONAL EFFECTS. "Furniture and other personal effects": see *Re Seton-Smith* [1902] 1 Ch. 717, cited FURNITURE. See also GOODS; *Re Wolfe* [1919] 2 I.R. 491.

"Personal effects" in a will to include a valuable stamp collection (*Re Collins' Will Trusts, Donne v Hewetson* [1971] 1 W.L.R. 37), but not a motor car (*Re Parish* [1964] 1 O.R. 353).

PERSONAL ENJOYMENT. See PERSONAL OCCUPATION.

PERSONAL ESTATE. The "personal estate and effects", or its equivalent, the "personal property" of an individual, might perhaps before 1925 be broadly defined to be all his property other than that which, if he died intestate, would go to his heir. (But see now Administration of Estates Act 1925 (c.23) s.33.) Either of these phrases includes all a person's goods and chattels, moneys, choses in action, leases for years, funded property, and shares. On which see the definition in s.1 of the Wills Act 1837 (c.26), and *Witherby v Rackham*, below; Wms. Exs. Pt 2, Bk. 2, Chs 1 and 2; see also *Butler v Butler*, 28 Ch. D. 66. New river shares however are realty (*Drybutter v Bartholomew*, 2 P. Wms. 127; *Buckeridge v Ingram*, 2 Ves. 652; *Bligh v Brent*, 6 L.J. Ex. Eq. 58). But Chelsea Water Works shares have been held to be personalty (*Bligh v Brent*, above). Sometimes canal shares have been held to be realty (1 Wms. Exs. (12th edn), 505). Cp. REAL ESTATE; PERSONAL CHATTELS.

"Where a person dies entitled to a mortgage interest (in land), that is personal estate at that time; and though afterwards the mortgagor may be barred, that would not convert the property, as between the representatives at the time of his death, from personal to real; but the personal taking it as real would be a trustee for the persons entitled to it at the death of the testator such as it was" (per Eldon C., *Att-Gen v Vigor*, 8 Ves. 276, 277, applied *Re Loveridge* [1902] 2 Ch. 863; see also *Flack v Longmate*, 8 Bea. 420).

As used in Malins' Act (Married Women's Reversionary Interests Act 1857 (c.57) s.1), "any personal estate whatsoever" was held to be large enough to comprise a chose in action, e.g. a life policy (*Witherby v Rackham*, 60 L.J. Ch. 511).

"Personal estate", in s.2 of the Wills Act 1861 (c.114), was not confined to moveables, but comprised also leaseholds (*Re Watson*, 35 W.R. 711). So of the same phrase in s.1 (*Re Grassi* [1905] 1 Ch. 584; *The Cocquerel* [1918] P. 4).

But the context may restrict the wide meaning of "personal estate". Thus in *Harrison v Blackburn* (17 C.B.N.S. 678), a bill of sale of the grantor's household goods, stock in trade, and all other goods chattels and effects, in or about his dwelling-house, "and all other his personal estate whatsoever", did not pass the terms he had in his dwelling-house (cp. *Ringer v Cann*, below).

So, "where a testator shows by his will that he uses the term 'personal estate' as contradistinguished from 'leaseholds', occurring in the same bequest, and he afterwards, by a codicil, directs a charitable legacy to be payable out of his 'personal estate', the expression is considered as used in the same restricted and peculiar sense as in his will; and the legacy is payable out of the pure personalty and is therefore good" (1 Jarm. (6th edn), 269N, citing *Wilson v Thomas*, 3 L.J. Ch. 144). But it has been said (Elph. 178), "no general rule can be laid down as to whether leaseholds will pass by a general description of 'personal property'. The principal cases are *Ringer v Cann*, 7 L.J. Ex. 108; *Doe d. Farmer v Howe*, 9 L.J.Q.B. 352; *Hopkinson v Lusk*, 34 Bea. 215; *White v Hunt*, L.R. 6 Ex. 32". See also *Debenham v Digby*, 28 L.T. 170, where *Harrison v Blackburn*, above, was distinguished.

On the other hand, the expression "personal estate" may be widened by a context so as to include realty (*Doe d. Tofield v Tofield*, 11 East. 246, stated 2 Jarm. (8th edn), 995; see also *Cadman v Cadman*, L.R. 13 Eq. 470, and *Re Cox*, below). But in such phrases as "personal estate and property", or "personal property, estate, and effects", the word "personal" will generally override the whole (2 Jarm. (8th edn), 975N, and cases there cited; see per Mansfield C.J., *Hogan v Jackson*, 1 Cowp. 306; see also *Jones v Robinson*, 3 C.P.D. 344); thus, Wood V.C. held that a gift of "all my personal estate and property whatsoever and wheresoever" did not pass realty (*Buchanan v Harrison*, 31 L.J. Ch. 74, cited PROPERTY).

So, if a testator direct his lands to be sold, and afterwards add a general bequest of all his "personal estate" (*Maugham v Mason*, 1 V. & B. 410; *Smith v Harding* [1874] W.N. 101; see also *Gibbs v Rumsey*, 2 V. & B. 294), or appoint a person "residuary executor" (*Berry v Usher*, 11 Ves. 87), any part of the proceeds of the sale that is undisposed of will not form part of the residuary fund in the first case, or pass to the residuary executor in the second; for nothing, properly speaking, is a testator's "personal estate" but what possesses that character at the moment of his decease.

A gift of "all my personal estate" to A, though followed by a devise of the real estate to B subject to the payment of debts and funeral expenses, is not sufficient to exonerate the personal estate from its primary liability for the debts and funeral expenses (*Re Banks* [1905] 1 Ch. 547, citing *Brummel v Prothero*, 3 Ves. 114). In *Re Lynes' Trust* [1919] 1 Ch. 80, it was held that an interest in the proceeds of the sale of real estate settled on trust for sale, although unexecuted, was personal estate within the meaning of the Wills Act 1861 (c.114).

The Wills Act 1861 (c.114) did not include real estate which the testator, by the will in question, elected to treat as personal estate (*Re Cartwright* [1939] Ch. 90).

But "personal estate of whatsoever nature" in a will has been held to include real estate in a case where the word of gift used was "devise" and there was very little other than real estate to give (*Re Cox* [1967] Qd. R. 173).

Where a husband and wife bought freehold land on which a trust for sale was imposed by virtue of s.36(1) of the Law of Property Act 1925 (c.20), such land did not pass under a gift of personal estate in the will of the wife, the survivor, since the trust for sale came to an end on the death of the husband (*Re Cook* [1948] Ch. 212).

"Personal estate and effects of any person deceased", for probate duty, means personal estate and effects which have belonged to the deceased in his lifetime; therefore, neither probate duty nor estate duty, is payable by the executors of the deceased in respect of property coming to his estate under a substitutional bequest to

PERSONAL

them in the event of the deceased dying before the donor of such property (*Lord Advocate v Bogie*, 63 L.J.P.C. 85; *Att-Gen v Lloyd* [1895] 1 Q.B. 496).

Stat. Def., Wills Act 1837 (c.26) s.1.

See ESTATE; MONEY; MOVEABLE; PERSONAL CHATTELS; PERSONAL EFFECTS; PERSONAL JEWELLERY; PERSONAL ORNAMENTS; PERSONAL PROPERTY; PERSONALTY; REAL ESTATE; REAL OR PERSONAL PROPERTY; OTHER; TIMBER.

PERSONAL EXPENSES. Stat. Def., Corrupt and Illegal Practices Prevention Act 1883 (c.51) s.64; Representation of the People Act 1949 (c.68) s.103.

PERSONAL GIFT. Personal gifts which are not assessable to income tax are those given on personal grounds other than for services rendered; this does not include tips to taxicab drivers (*Calvert v Wainwright* [1947] K.B. 526).

PERSONAL GOODS. For examination of this phrase as used in Co. Litt. 185B, see *Re Butler*, 38 Ch. D. 286.

PERSONAL INFORMATION. Stat. Def., Local Government Finance Act 1992 (c.14) Sch.2 para.18A(3) as inserted by Local Government Act 2003 (c.26) s.85.

See GOODS.

PERSONAL INJURY. In the context of a claim for industrial injuries benefit the meaning of “personal injury” must take into account the development of surgery and may include damage to a prosthesis which is so intimately linked to the claimant’s body as to form part of it—in this case an artificial hip joint (*Industrial Tribunal Decision No.R (1) 8/81*).

Witnesses of a disturbance in a street involving damage to property had not suffered a “personal injury” within the meaning of s.35(1) of the Powers of Criminal Courts Act 1973 (c.62) (*R. v Vaughan* (1990) Cr.App.R.(S.) 46).

Stat. Def., Employment Protection (Consolidation) Act 1978 (c.44) s.131; Limitation Act 1980 (c.58) s.38; Supreme Court Act 1981 (c.54) s.35; Employment Act 1982 (c.46) s.16(6); Administration of Justice Act 1982 (c.53) s.13, Sch.1 Pt 1; County Courts Act 1984 (c.28) ss.51, 54, 69.

Stat. Def., “any disease or impairment of a person’s physical or mental condition and includes the prolongation of any disease or such impairment” (National Health Service Act 1977 (c.49) s.43C(3) inserted by the Health Act 1999 (c.8) s.9(1)).

Stat. Def., “means any disease or impairment of a person’s physical or mental condition and includes the prolongation of any disease or such impairment” (National Health Service Act 2006 s.166(3)).

Stat. Def., “Includes any impairment of a person’s physical or mental condition” (Energy Act 2013 s.112).

See also INJURY.

PERSONAL JEWELLERY. “Personal jewellery” in the will of a male person did not include a quantity of feminine jewellery formerly owned by his wife (*Le Cras v Perpetual Trustee Co*, 41 A.L.J.R. 213).

PERSONAL LABOUR. “Personal earnings” from personal labour (which do not vest in a trustee in bankruptcy) “point to a limitation of ‘personal earnings’ to something analogous, both in its character and in the nature of its remuneration, to personal daily labour—not, of course, manual or menial only” (per Wright J., *Mercer v Vans Colina*, 67 L.J.Q.B. 424). Therefore, a person who employs several persons under him and procures vans for removal of furniture—in other words, one who carries on business as a furniture remover—is not using merely his personal labour (*Crofton v Poole*, 1 B. & Ad. 568; see also *Wadling v Oliphant*, 1 Q.B.D. 145; *Re*

Dowling, 4 Ch. D. 689). So, semble, the earnings and profits of a dentist are not such personal earnings (*Re Rogers* [1894] 1 Q.B. 425); nor are the fees and profits of a surgeon, and apothecary (*Elliot v Clayton*, 16 Q.B. 581), nor the fees of an architect (*Emden v Carte*, 17 Ch. D. 769), nor the commission of a commission agent (*Mercer v Vans Colina*, above), nor money won in a contest of skill (*Shoolbred v Roberts* [1899] 2 Q.B. 560), nor rewards given to a champion billiard player for playing with no other balls than those made by the person giving those rewards (*Re Roberts* [1900] 1 Q.B. 122). See also INCOME.

Seemble, that patent royalties may be personal earnings (*Re Graydon* [1896] 1 Q.B. 417).

The exception of “personal earnings” from the property which vests in a trustee in bankruptcy “is not to be found in the Act itself, but is said to be an implied exception based upon a long series of authorities and well recognised for the last 100 years” (per Lindley L.J., *Re Roberts*, above). See hereon per Willes J., *Kitson v Hardwick*, L.R. 7 C.P. 479.

See EARNINGS; HANDICRAFT; LABOUR; MANUAL LABOUR; WAGES; WORKMAN; WAR INJURIES.

PERSONAL NATURE. “Evidence of a personal nature”: Stat. Def., Industrial Tribunals Act 1996 (c.17) s.12(7).

PERSONAL OCCUPATION. A condition of personal occupation in a devise implies that the devisee must himself actually occupy the property (*Re Edwards* [1897] 2 Ch. 412, cited OCCUPATION). Cp. RESIDE, for which see note on Settled Land Act 1882 (c.38) s.51.

“Actual personal occupancy”: see *Whitelaw v M’Gowan*, 43 S.L.R. 346, cited OCCUPATION.

A tenant may be in personal occupation of a dwelling-house, for the purposes of the Rent Restriction Acts, even though he resides there on only two nights a week and meanwhile allows friends to use it (*Langford Property Co Ltd v Tureman* [1949] 1 K.B. 29).

Cp. “personally reside”; *Edmond v Reid*, 9 Macph. 782, cited RESIDE.

See REAL RESIDENT HOLDER.

PERSONAL OR OTHER RELATIONSHIP. “21. The question raised by the first issue is whether the alleged conduct of which complaint is made in these proceedings is conduct to which Part II of RIPA applies, on the footing that the conduct is the establishing and maintaining of a ‘personal or other relationship’ within the meaning of s.26(8)(a) [of the Regulation of Investigatory Powers Act 2000]. If an intimate sexual relationship is not a personal or other relationship, the IPT has no jurisdiction to entertain the human rights claims and they must, therefore, be determined by the court. What is meant by ‘personal or other relationship’? These are ordinary words. A personal relationship is a relationship between persons. As a matter of ordinary language, a sexual relationship is an example of such a relationship. At first sight, it seems obvious that the IPT has jurisdiction to deal with the human rights claims. We must therefore examine the reasons given by Ms Kaufmann as to why a personal or other relationship does not include an intimate sexual relationship. . . . The phrase ‘personal or other relationship’ in s.26(8)(a) forms part of the definition of the type of conduct which can be authorised under s.27 and which, if it is carried out in ‘challengeable circumstances’, may be the subject of human rights proceedings before the IPT under s.65. In its plain and ordinary meaning, it includes intimate sexual

PERSONAL

relationships. In the principle of legality cases, there was a general power which was capable of being used for many purposes. There was doubt as to whether Parliament intended that it should be capable of being used so as to override fundamental rights. In the present context, there is no doubt that, in enacting RIPA, Parliament intended to override fundamental human rights subject to certain protections. Most pertinently, these include the requirement for necessity and proportionality. It can fairly be said that Parliament may not have foreseen in precisely what way those human rights might be overridden and there is certainly nothing to suggest that Parliament contemplated that surveillance by a CHIS might be conducted by using the extraordinary techniques that are alleged to have been used in the present case. But none of that matters. To give 'personal or other relationships' its ordinary meaning so as to include intimate sexual relationships does not produce any startling or unreasonable consequences which Parliament cannot have intended. That is why we do not consider that the principle of legality requires the words to be given a narrower meaning than they naturally bear." (*AJA v Commissioner of Police for the Metropolis* [2013] EWCA Civ 1342.)

PERSONAL PROPERTY. "Personal property" (Customs and Inland Revenue Act 1881 (c.12) s.38(2), amended by Customs and Inland Revenue Act 1889 (c.7) s.11) includes land of which there has been an equitable conversion (*Att-Gen v Dodd* [1894] 2 Q.B. 150); so, of a mortgagee's interest in the mortgaged realty, even after a foreclosure order until that interest becomes absolute by the expiry of the time fixed by the order for redemption and the nonpayment of the mortgage debt (*Att-Gen v Worrall* [1895] 1 Q.B. 99).

"Personal property settled" before the Finance Act 1894 (c.30) s.21(1): see *Att-Gen v Dodington*, 66 L.J.Q.B. 441, 684, cited UNDER. See also *Att-Gen v Londesborough* [1905] 1 K.B. 98.

In the will of a testator who had no real estate or leaseholds the expression "property not personal" was held to include personal estate other than personal belongings (*Re Banham*, 47 T.L.R. 376). See also BELONGINGS; BEQUEST OF PERSONAL PROPERTY.

A right of action is "personal property" (*Re United Pacific Transport Pty* [1968] Qd. R. 517).

Stat. Def., Succession Duty Act 1853 (c.51) s.1.

See PERSONAL CHATTELS; PERSONAL EFFECTS; PERSONAL ESTATE; PERSONAL JEWELLERY; PERSONAL ORNAMENTS; PERSONALTY; REAL OR PERSONAL PROPERTY.

PERSONAL QUALIFICATIONS. In Finance Act 1915 (c.62) s.39: see *Commissioners of Inland Revenue v Maxse* [1919] 1 K.B. 647; *Inland Revenue Commissioners v North-Ingram* [1920] 2 K.B. 705.

PERSONAL REPRESENTATIVE. This phrase (except when otherwise controlled by a context) is synonymous with legal representative. See also REPRESENTATIVES; REAL REPRESENTATIVE.

An executor (though he had not taken probate) of a surviving trustee, was such trustee's "personal representative" within Trustee Act 1850 (c.60) s.25 (*Re Ellis*, 24 Bea. 426); so also one of the next of kin might be, though not an executor (*Re Stroud* [1874] W.N. 180). See Trustee Act 1925 (c.19) s.18.

The general (as distinguished from special) executors were the "personal representatives" of a mortgagee or trustee within Conveyancing Act 1881 (c.41) s.30 (see Administration of Estates Act 1925 (c.23) ss.1, 3) and Trustee Act 1893 (c.53) s.10 (see Trustee Act 1925 (c.19) s.36) (*Re Parker* [1894] 1 Ch. 707).

In Land Transfer Act 1897 (c.65) s.24(2): “‘personal representative’ means an executor or administrator”; and throughout Pt 1 of that Act, “personal representatives”, in cases where executors were appointed, meant all the executors named in the will, whether they had proved or not, except that the phrase would not have included such nominated executors as by renunciation or otherwise had made it impossible for them to obtain probate (*Re Pawley and London & Provincial Bank* [1900] 1 Ch. 58). Nor, in Land Transfer Act 1897, did “personal representative” include persons not entitled to English probate and chattels real, e.g. special executors of property in Australia (*Re Cohen’s Executors and London CC* [1902] 1 Ch. 187). Cp. REAL REPRESENTATIVE. See Administration of Estates Act 1925 (c.23) s.55.

“Personal representatives” held, contextually, to mean descendants of children of testatrix (*Rainford v Knowles*, 59 L.T. 359), or the phrase may mean next of kin (see LEGAL REPRESENTATIVES), or sometimes give an absolute interest to the person spoken of (*Alger v Parrott*, L.R. 3 Eq. 328). See NEXT PERSONAL REPRESENTATIVES.

See also Law of Property Act 1925 (c.20) s.205, Settled Land Act 1925 (c.18) s.117; Trustee Act 1925 (c.19) ss.18 and 68; Land Registration Act 1925 (c.21) s.3; Administration of Estates Act 1925 (c.23) ss.55 and 39; see also *Re Trollope’s Will Trusts* [1927] 1 Ch. 596; *Re Brooks* [1928] 1 Ch. 214.

“Personal representative” did not signify the existence of a relationship of or akin to agency (*Advocate (Lord) v Chung* [1995] S.L.T. 65).

Stat. Def., Copyright Act 1843 (c.45) s.2; Patents Act 1949 (c.87) s.101(2); Registered Designs Act 1949 (c.88) s.44(4); Income and Corporation Taxes Act 1970 (c.10) s.432(4); Finance Act 1975 (c.7) s.51; Limitation Act 1975 (c.54) s.1(9); Development Land Tax Act 1976 (c.24) s.47; Limitation Act 1980 (c.58) s.11(6); Finance Act 1982 (c.39) Sch.9 para.16; Capital Transfer Act 1984 (c.51) s.272; Finance Act 2004 (c.12) s.279.

Stat. Def., Corporation Tax Act 2010 s.1119.

PERSONAL SECURITY. A power to invest on “personal security” seems, obviously, to include a security on personal property; but, semble, it also includes the security of somebody’s personal obligation (*Forbes v Ross*, 2 Bro. C.C. 430; *Pickard v Anderson*, L.R. 13 Eq. 608; but see *Langston v Ollivant*, Coop. G. 33), including that of the tenant for life, if he (like any other person) is a person to whom the loan may prudently be made (*Re Laing* [1899] 1 Ch. 593).

That a power to invest on “personal security” includes a security on personal obligation as well as one on personal property, is also the ruling in Scotland (*Sim v Fergusson*, 43 S.L.R. 795; see also *Ritchie v Ritchie*, 25 S.L.R. 515, cited SECURITIES).

PERSONAL SERVICE. See SERVICE.

PERSONAL SERVICES. “Provides persons of that racial group with personal services” (Race Relations Act 1976 (c.74) s.5(2)(d)). This section, as an exception to s.4, should not be construed too widely (*Tottenham Green Under Fives Centre v Marshall* (1989) I.R.L.R. 147). “Personal services” envisages circumstances where there is direct contact and where language and cultural understanding are of material importance (*Lambeth LBC v Commission for Racial Equality* [1989] I.C.R. 641).

PERSONAL USE. “Personal use, by definition, varies from one person to another, and from one culture to another, and the designation, for reference purposes, of a typical use would for that reason be unsatisfactory. It is therefore essential, for the proper application of Reg.918/83, that a case-by-case assessment be made as to whether importation is commercial in character, account being taken, where

PERSONAL

appropriate, of the lifestyle and habits of each traveller. While the nature and quantity of the goods under consideration are among the indicators to be taken into account, customs authorities cannot confine themselves to those indicators in assessing whether or not the importation is commercial.” (*Criminal Proceedings Against Lyckeskog* [2004] 3 C.M.L.R. 29, ECJ.) See PERSONAL OCCUPATION; RESIDE.

“Personal use and occupation”: see *Re Anderson* [1920] 1 Ch. 175.

PERSONAL WASHING FACILITIES. “Personal washing facilities” (Housing Act 1961 (c.65) s.15(1)) can be interpreted as including a piped supply of hot water (*McPhail v Islington LBC* [1970] 2 Q.B. 197).

PERSONALLY. A condition in a will that a person “shall personally occupy” was held void for uncertainty (*Re Brewis* [1945] V.L.R. 199). See APPEAR; CONTRACT OF SERVICE.

“Personally or by proxy”: see VOTE. See also *McMillan v Le Roi Mining Co* [1906] 1 Ch. 331, cited VOTE.

“Personally reside”: see *Edmond v Reid*, 9 Macph. 792, cited RESIDE.

“Personally conduct the business”: see *Jenkins v Price* [1908] 1 Ch. 10, cited UNREASONABLY.

“Personally to execute any works or labour” (Sex Discrimination Act 1975 (c.65) s.82(1)). A newspaper distribution agent’s agreement with a newspaper was that, although he was under no obligation personally to carry out the tasks involved, he was still required to exercise day-to-day supervision. This was held to be an obligation “personally to execute any works or labour” within the meaning of this section (*Mirror Group Newspapers v Gunning* [1985] 1 W.L.R. 394). The decision of the Employment Appeal Tribunal in *Mirror Group Newspapers v Gunning* [1985] 1 W.L.R. 394 was reversed by the Court of Appeal on the grounds that, although it was doubtless anticipated that under the agreement to distribute newspapers the work would be personally carried out, there was no obligation in the agreement to that effect (*Mirror Group Newspapers v Gunning* [1986] 1 W.L.R. 546).

See also RESIDE.

PERSONALTY. A direction to pay a charitable bequest out of the “personalty” means the pure personalty (*Nickisson v Cockill*, 3 D.G.J. & S. 622; *Roberts v Jones* [1880] W.N. 96).

PERSONAM. A judgment in personam binds only the parties to the proceedings, as distinguished from one in rem which fixes the status of the matter in litigation once for all, and concludes all persons: see REM.

PERSONATE. To “personate” means “to pretend to be a person” (per Crompton J., *R. v Hague*, below); but, semble, the definition should be “to pretend to be an existing person”, because pretending to be a dead elector is not personation (*Whiteley v Chappell*, L.R. 4 Q.B. 147, cited ENTITLED TO VOTE). The offence of personating a voter is complete as soon as a person has, to the proper officer, falsely represented himself as the person entitled to vote, even though he stop short of voting (*R. v Hague*, 33 L.J.M.C. 81). See hereon Representation of the People Act 1949 (c.68) s.47.

PERSONS INTERESTED. In determining whether a company was an interested person with rights to be consulted over local authority expenditure it is not relevant that the purpose for which information is sought is one of which the local authority disapproves (*R. (HTV Ltd) v Bristol City Council*, T.L.R., June 9, 2004, Q.B.D.).

PERSUADE. To “solicit, encourage, persuade, or endeavour to persuade” a person to commit murder (Offences Against the Persons Act 1861 (c.100) s.4) was not

complete unless it could be shown that there had been some communication by the accused to the person whom he was alleged to have solicited or endeavoured to persuade; but it was not necessary to show that the mind of such person had been affected by such communication (per Alverstone C.J., *R. v Krause*, 66 J.P. 121).

See COUNSEL OR PROCURE; INTERFERE; PROCURE; SOLICIT.

PERTAINING TO. Means “belonging to” or “within the sphere of”: see *R. v Kelly*, *Ex p. State of Victoria*, 81 C.L.R. 64.

PERTINENZA. In the Treaty of Peace with Austria 1920, “pertinenzia” is to be construed as the exact equivalent of the phrase “civil rights”: see *Bohemian Union Bank v Administrator of Austrian Property* [1927] 2 Ch. 175.

PERVERSE. “Secondly there is the approach of the Court of Appeal to questions of fact. The Court will only interfere with a finding of fact by a judge where there was no proper material upon which the finding could be based—the legal term for this is ‘perverse’ although in this context the word does not carry with it the overtone of personal criticism which it is apt to carry in other contexts.” (*KCI Licensing Inc v Smith & Nephew Plc* [2010] EWCA Civ 1260.)

PERVERTING THE COURSE OF JUSTICE. The “course of public justice” includes the process of criminal investigation (*R. v Cotter* [2003] 2 W.L.R. 115, CA).

PESAGE. A customary duty for the weighing of merchandise other than wool (Hale, *De Portibus Maris*, Ch.6). See also *Webb’s Case*, 8 Rep. 46 a. Sometimes this is called poisage. Cp. TRONAGE.

PESETA. A peseta is the unit of account in the currency of Spain. An obligation to pay pesetas, or any other foreign unit of account, is performed by payment in whatever is legal tender and legal currency under the municipal law of the country whose unit of account is the subject-matter of the obligation (*Pymont Ltd v Schott* [1939] A.C. 145, following *Re Chesterman’s Trusts* 1923] 2 Ch. 446). See *Marrache v Ashton* [1943] A.C. 311.

PEST. Stat. Def., Food and Environment Protection Act 1985 (c.48) s.16(15).

PESTICIDE. Stat. Def., Natural Environment and Rural Communities Act 2006 s.46(2).

PET SHOP. A person who kept animals at his home, to which the public had no access, for short periods in transit, for the purposes of exporting them, nevertheless kept a “pet shop” within the Pet Animals Act 1951 (c.35) s.1 (*Chalmers v Diwell* (1975) 74 L.G.R. 173).

PETITION. As to when a person or a department acting for the Crown is liable to be sued in contract, instead of the plaintiff proceeding by petition of right, see *Graham v Works and Public Buildings Commissioners* [1901] 2 K.B. 781, and cases there cited. But see now Crown Proceedings Act 1947 (c.44) s.1.

“Petition” (Matrimonial Causes Act 1950 (c.25) s.6, now Matrimonial Causes Act 1973 (c.18)) includes a prayer in an answer or a cross-petition put in the same document, whether or not the suit as a whole has been initiated by the husband’s petition, and whether or not that petition fails for want of jurisdiction (*Russell v Russell and Roebuck* [1957] P. 375).

“Election petition”: see ELECTION.

PETITION OFFICER. Stat. Def., Recall of MPs Act 2015 s.22.

PETITIONER. In the Judicature Acts, “petitioner” includes “every person making any application to the court, either by petition motion or summons, otherwise than as against any defendant” (Judicature Act 1925 (c.49) s.225). Cp. PLAINTIFF.

PETO'S

Parliamentary Costs Act 1865 (c.27) s.2 provides that when the Committee of either House of Parliament on a Private Bill decides that the preamble is proved, and reports that the promoters have been vexatiously subjected to expense by the opposition of any petitioner against the same, then the Committee may order such petitioner to pay costs to the promoters; there, "petitioner" only includes the person appearing on the petition as the petitioner, and the Committee cannot go behind the petition and award costs against a person not appearing on the petition as petitioner on the ground that he was in fact the real petitioner (per Bowen and Fry L.J.J., Esher M.R. dissenting, *Mallet v Hanly*, 18 Q.B.D. 787).

"Petitioner" (Divorce Reform Act 1969 (c.55) s.2(1)(b)) means the petitioner in the case, and not a hypothetical "reasonable" petitioner, so that the petitioner's character, personality and attributes must be taken into account (*Ash v Ash* [1972] Fam. 135; *Pheasant v Pheasant* [1972] Fam. 202).

PETO'S ACT. Trustee Appointment Act 1850 (c.28).

PETROLEUM. In a reservation of "all . . . petroleum", "petroleum" included gas in solution in the liquid (*Borys v Canadian Pacific Ry* [1953] A.C. 217).

Stat. Def., Oil Taxation Act 1975 (c.22) Sch.9 para.7; Petroleum and Submarine Pipe-lines Act 1975 (c.74) s.16; Energy Act 1976 (c.76) s.5; Coal Industry Act 1977 (c.39) s.9(5); Petroleum Act 1998 (c.58) s.1; Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1998 (SI 1998/968) reg.2(1).

"Petroleum Field": Stat. Def., National Minimum Wage Act 1998 (c.39) s.42(5).

PETTIFOGGING. To write of a lawyer that he is a "pettifogging shyster" is libel, and needs no innuendo (Odgers (6th edn), 103, citing *Bailey v Kalamazoo Co*, 4 Chaney 251).

PETTY CHAPMAN. See HAWKER; PEDLAR; KIDDER.

PETTY LARCENY. Petty larceny was at common law distinguished from THEFT in that "the goods stolen exceeds not the value of twelve pence" (Cowel, *Larceny*). The distinction was abolished by Larceny Act 1861 (c.96) s.2.

PETTY SESSIONS. Petty Sessions of the Peace are the courts in which the justices of the peace, or stipendiary magistrates, discharge their various judicial and ministerial functions.

"Petty-sessional court-house": Stat. Def., Magistrates' Courts Act 1980 (c.43) s.150.

"Petty Sessions area": Stat. Def., Justices of the Peace Act 1979 (c.55) s.4 as amended by Local Government Act 1985 (c.51) s.12(2).

PETTY TREASON. See TREASON.

PEW. A freehold interest in a pew may be annexed to a house by a faculty as well as by prescription, for the latter supposes a faculty (*Philippis v Halliday* [1891] A.C. 361); as to what is sufficient proof of a prescription, see *Stileman-Gibbard v Wilkinson* [1897] 1 Q.B. 749.

See FEE SIMPLE; OCCUPIED.

PHARMACIST. Stat. Def., Pharmacy and Poisons Act 1933 (c.25) s.29; National Health Service Act 1946 (c.81) s.79(1); Medicines Act 1968 (c.67) s.132; Poisons Act 1972 (c.66) s.11.

PHARMACY. Stat. Def., Pharmacy and Poisons Act 1933 (c.25) s.29; Pharmacy Act 1954 (c.61) s.2.

PHILANTHROPIC. A bequest for "philanthropic", or for "charitable or philanthropic" purposes, is not a good charity (*Re Macduff* [1896] 2 Ch. 451). In that

case, Stirling J., said: “‘Philanthropic’ is no doubt a word of narrower meaning than ‘benevolent’. An act may be benevolent if it indicate goodwill to a particular individual only; whereas, an act cannot be said to be philanthropic unless it indicate goodwill to mankind at large. Still, it seems to me that ‘philanthropic’ is wide enough to comprise purposes not technically charitable”. See OR; CHARITABLE PURPOSE.

PHILLIMORE’S ACT. Ecclesiastical Courts Act 1855 (c.41).

PHOTOGRAPH. “We can understand the difference between an original painting or design and a copy of it; but it is hard to say what an original photograph is. All photographs are copies of some object—either picture, statue, piece of architecture, or the like. I think that the photograph of a picture is an ‘original photograph’” within Fine Arts Copyright Act 1862 (c.68) s.1 (per Blackburn J., *Ex p. Walker, Re Graves*, 39 L.J.Q.B. 35). See also *Boucas v Cooke* [1903] 2 K.B. 227, cited FOR; *Stackemann v Paton* [1906] 1 Ch. 774, cited GOOD.

A photo-copying machine which produced copies without contact between them and the originals, making use of a lens and mirror, was not a “photographic camera” within the Import Duties (General) (No.10) Order 1964 (No.1986) (*Apeco v Customs and Excise Commissioners*, 112 S.J. 315).

Cinematograph films are “photographs” within the meaning of s.42 of the Customs Consolidation Act 1876 (c.36), even though some mechanical apparatus is needed to show them (*Derrick v Commissioners of Customs and Excise* [1972] 2 Q.B. 28).

A computer disk which contained data which could be converted into a screen image and into a print exactly reproducing an original photograph from which it was derived, came within the definition of “photograph” for the purposes of the Protection of Children Act 1978 (c.37) ss.1 and 7, even though this technology had not been anticipated when the Act was passed (*R. v Fellows* [1997] 1 Cr.App.R. 244).

The term “indecent photograph” in s.1(1)(a) of the Protection of Children Act 1978 (c.37) is extended by s.7 to include a negative or copy of a photograph, while photograph includes, also by virtue of s.7, data stored on a computer disk which is capable of conversion into a photograph. The result was that downloading images onto a disk or printing them amounted to making an indecent photograph for the purposes of the offence under s.1(1)(a) (*R. v Bowden* [2000] 2 All E.R. 418, CA).

Stat. Def., Copyright, Designs and Patents Act 1988 (c.48) s.4.

“Pseudo-photograph”: Stat. Def., Protection of Children Act 1978 (c.37) s.7 as amended by Criminal Justice and Public Order Act 1994 (c.33) s.84(3).

“Photograph”: Stat. Def., Copyright Act 1911 (c.46) s.35; Protection of Children Act 1978 (c.37) s.7.

“Photograph, portrait or sketch taken or made in court”: see Criminal Justice Act 1925 (c.86) s.41.

See AUTHOR; FOR; PAINTING; PICTURE; PORTRAIT; PSEUDO-PHOTOGRAPH.

PHYSIC. “The science of physic doth comprehend include and contain, the knowledge of surgery as a special member and part of the same” (32 Hen. 8 (c.40) s.3)—that is a direct recognition that “physic”, as also its equivalent “medicine”, embraced (at any rate, in the time of Henry VIII) “the general art of healing, whether by drugs or surgery, and was not confined to the healing by drugs” (per Smith L.J., *Royal College of Physicians v General Medical Council*, 62 L.J.Q.B. 329, cited MEDICAL CORPORATION).

See PHYSICIAN; SURGEON; MEDICINE.

PHYSICAL

PHYSICAL. “Physical infirmity”: see *Cruikshank v Northern Accident Insurance*, 33 S.L.R. 134, cited SLIGHT.

“Physical possession”: see ACTUAL.

PHYSICAL FEATURE. Stat. Def., Equality Act 2010 s.20.

PHYSICIAN. “Physician”, in its technical sense, denotes a person “in the highest grade of medical practitioners” (per Channell J., *Hunter v Clare*, below). A Licenciate of the Society of Apothecaries—registered under the Medical Act 1886 (c.48), and qualified to practise in medicine and surgery as well as an apothecary—was not entitled to describe himself as a “physician”; but to support a conviction under Medical Act 1858 (c.90) s.40, such description would have to have been adopted “wilfully” as well as “falsely” (*Hunter v Clare* [1899] 1 Q.B. 635). See also *Pedgrift v Chevallier*, 29 L.J.M.C. 225; *Wilson v Inyang* [1951] 2 K.B. 789, both cited WILFULLY AND FALSELY.

The words “physician or surgeon or apothecary” do not mean the same as “general medical practice”: see *Re Jenkins’ Deed of Partnership* [1948] 1 All E.R. 471.

“Royal College of Physicians of London”: see Medical Act 1860 (c.66) ss.1, 6.

See “Medical Practitioner”, under MEDICAL.

Cp. SURGEON; APOTHECARY; SCHOLAR.

PICK. Stat. Def., Wildlife and Countryside Act 1981 (c.69) s.27.

PICKAGE. See STALLAGE AND PICKAGE.

PICKETING. See BESET.

PICLE. “Picle; pickle; pightel; pitle; pigtle: a little close. Spelm. *Pictellum*” (Elph. 616).

“‘Picle’, or ‘pitle’, seems to come from the Italian (*piccolo, parvus*), and it signifies with us a little small close or inclosure” (Termes de la Ley).

PICTURE. Semble, a miniature portrait, ordinarily worn, though richly framed will not pass under a bequest of “pictures” (per Wood V.C., *Tempest v Tempest*, 2 K. & J. 644, 645); but ordinary miniatures may pass under a bequest of “pictures and paintings”: see *Re Cunningham*, 24 T.L.R. 789. See also FURNITURE; HOUSEHOLD; VERTU. Cp. PERSONAL ORNAMENTS.

Its frame was part of a “picture”, as that word was used in the Carriers Act 1830 (c.68) (*Henderson v London & North Western Railway*, L.R. 5 Ex.90. But see *Treadwin v Great Eastern Railway*, L.R. 3 C.P. 308).

“Pictures . . . of a kind produced in quantity for general sale” (Finance Act 1948 (c.49) Sch.VIII Group 25): poster stamps sold with goods for advertisement purposes were “pictures” (*Stephenson Bros v Customs and Excise Commissioners* [1953] 1 W.L.R. 335).

See PAINTING; ENGRAVING; FIXTURES; PHOTOGRAPH; PORTRAIT.

PIECE. As to a demise of a “piece of ground together with . . . all buildings”, see *Field v Curnick*, 95 L.J.K.B. 756.

PIECE RATE. Stat. Def., Wages Act 1986 (c.48) s.26.

PIER. Collision with “piers or similar structures”, in a marine insurance, includes the toe of a breakwater outside a harbour (*Union Marine Insurance v Borwick* [1895] 2 Q.B. 279, cited COLLISION). See also DAMAGE BY COLLISION.

In Thames Conservancy Act 1894 (c. clxxxvii) s.3, “‘pier’ includes any floating pier and any jetty”.

PIG IRON. Parol evidence is inadmissible to explain "pig iron" in a written contract, but its meaning even there may be shown by a mercantile usage (*Mackenzie v Dunlop*, 1 Patterson 669, cited FOB).

PIGEON. To say of one that he "pigeoned", even with an innuendo that he thereby obtained, e.g. a bill of exchange, by fraud, held not actionable (*Pemberton v Colls*, 10 Q.B. 461).

PILLORY. "Pillory is an engine of punishment, ordained by the statute of 51 Hen. 3, for the punishment of bakers; but now used for many other offenders" (Termes de la Ley); it was abolished by Pillory Abolition Act 1837 (c.23), on which see Statute Law Revision (No.2) Act 1888 (c.57).

PILOT. In Merchant Shipping Act 1894 (c.60) s.742, "'pilot' means any person not belonging to a ship who has the conduct thereof".

An "under book" pilot is one qualified to take charge of a vessel drawing not more than 14 feet of water; an "upper book" pilot is one authorised to pilot vessels of any draught (*The Carl XV* [1892] P. 325).

"Pilot vessels engaged on their station": see *The Hassel* [1919] P. 355.

"Pilot" (Pilotage Act 1913 (c.31) s.30(3)): see *Montague v Babbs* [1972] 1 W.L.R. 176; *Crouch v McMillan* [1972] 1 W.L.R. 182.

As to pilots generally, see now Pilotage Act 1983 (c.21).

"Qualified pilot": see QUALIFIED.

PILOT SCHEME. Stat. Def., Welfare Reform Act 2007 s.19.

PILOTAGE. "Pilotage": Stat. Def., Pilotage Act 1987 (c.21) s.31(1).

"Pilotage district" (Merchant Shipping Act 1894 (c.60) s.605(1)): see *The Assaye* [1905] P. 289.

See "English Channel District", under ENGLISH; LONDON DISTRICT; TRINITY HOUSE OUTPORT DISTRICTS.

PILOTING. There is no precise definition of piloting, but it seems that it may be carried out without any physical connection or contact between tug and tow (*The Baltyk* [1947] 2 All E.R. 560).

PIN MONEY. Pin money is an allowance made to a wife, generally upon marriage, "to save the trouble of a constant recurrence by the wife to the husband" for money to defray her ordinary personal expenses, e.g. milliner's bills, repair of jewels and trinkets, pocket money (*Howard v Digby*, 8 Bligh, N.S. 265); its arrears cannot be recovered for more than one year (*Aston v Aston*, 1. Ves. Sen. 267).

Cp. PARAPHERNALIA

PINCH. See HARD.

PIOUS. See GODLY.

PIOUS USES. As to how the pre-Reformation phrase "pious uses" was supplanted by the post-Reformation "godly uses", see judgment for Fry L.J., *R. v Income Tax Commissioners*, 22 Q.B.D. 296. See hereon GODLY.

PIPE. "The pipes" (Waterworks Clauses Act 1847 (c.17) s.35) were the water mains, and did not include service-pipes by which water was conducted into houses (*Milnes v Huddersfield*, 11 App. Cas. 511).

Stat. Def., Highways (Miscellaneous Provisions) Act 1961 (c.63) s.6(5).

See MAIN.

PIPE-LINE. "Pipe-line" (Factories Act 1961 (c.34) s.176). A gas pipeline was not a "pipe-line" within the definition of "work of engineering construction" in the section (*Griffith v Scottish Gas Board*, 1963 S.L.T. 286).

PIRACY

Stat. Def., Transport Act 1962 (c.46) s.12(4); Pipelines Act 1962 (c.58) s.65(1).

PIRACY. “‘Piracy’ is only a sea term for robbery” (*R. v Dawson*, 13 St. Tr. 454, cited and approved *Att-Gen (Hong Kong) v Kwok-a-Sing*, L.R. 5 P.C. 199, 200). See also *Cameron v HM Advocate* (1971) S.L.T. 333.

In time of peace, any act of depredation on a ship is *prima facie* an act of piracy; but in time of WAR between two countries the presumption is that depredation by one of them on the ship of the other is an act of legitimate warfare (*Re Tivnan, or Ternan*, 33 L.J.M.C. 201). As to such a depredation upon the ship of a non-belligerent country, see *Sivewright v Allen* [1906] 2 K.B. 81, cited LOSS.

Actual robbery is not an essential element in the crime of piracy *jure gentium*. Equally a frustrated attempt to commit a piratical robbery is piracy *jure gentium* (*Re Piracy Jure Gentium* [1934] A.C. 586).

“Piracy” (Extradition Act 1843 (c.76) s.1) did not mean piracy by the law of nations, but piracy according to the municipal law of the United Kingdom or the United States, as the case might be (*Re Tivnan*, above).

Plain theft without actual threatened violence could not constitute “piracy” under a marine insurance policy (*Athens Maritime Enterprises Corporation v The Hellenic Mutual War Risks Association* [1983] 1 All E.R. 590).

By Slave Trade Act 1824 (c.113) s.9, the person or persons doing the acts of slave trading therein described “shall be deemed and adjudged guilty of piracy, felony, and robbery”.

As to copyright, see INFRINGEMENT.

PIRATE. A pirate “signifieth a rover at sea” (Co. Litt. 391A), who commits robbery or forcible depredation or murder, on the high seas (*The Magellan Pirates*, 18 Jur. 18; *United States v Smith*, 1 Sp. 90 n). An independent state may be piratical; and insurgents subject of an independent state who commit acts of piracy, and “pirates” within Piracy Act 1850 (c.26) s.2 (*The Magellan Pirates*, above). See ATTACK.

Pirates “certainly take by force and not by stealth” (per Pollock C.B., *Rothschild v Royal Mail Steam Packet Co*, 7 Ex 734).

In a policy of insurance “a pirate is a man who is plundering indiscriminately for his own ends, and not a man who is simply against the property of a particular state for a public end—the end of establishing a government—although that act may be illegal and even criminal . . .” (per Vaughan Williams L.J. in *Republic of Bolivia v Indemnity Mutual Marine Insurance Co* [1909] 1 K.B. 785).

Stat. Def., Marine Insurance Act 1906 (c.41) Sch.1 r.8.

See PIRACY; ROBBERS; THIEVES; PERIL OF THE SEA.

PIRATED. See MUSICAL WORK; see also COPY.

PISCARY. “‘Piscary’ is a liberty of fishing in an other mans waters” (Termes de la Ley). See FISHERY.

PISTOL. Stat. Def., Pistols Act 1903 (c.18) s.2.

See GUN.

PITCH. The stopping of a motor van on the highway in order to sell ice-cream therefrom was not “pitching” a stall within s.72 of the Highways Act 1835 (c.50) (*Divito v Stickings* [1948] L.J.R. 1079).

“Pitches” (Highways Act 1959 (c.25) s.127(c)). A mobile snack bar stationed for a substantial time in the layby of a highway for the purpose of carrying on business there was a “stall” “pitched” on the highway within the meaning of this section (*Waltham Forest LBC v Mills* (1979) 78 L.G.R. 248).

PITS. See *Lofthouse Colliery v Ogden*, 107 L.T. 827.

PITS AND VEINS. As to what would pass under a devise of "pits and veins": see *Brown v Whiteway*, 8 Hare 145, and see thereon MacSwinney (5th edn), 2.

PITTANSARY. Is the person entrusted with the collection and distribution of the funds of a Dean and Chapter (*Shoubridge v Clark*, 12 C.B. 335).

PLACARD. "Placard" is a word used in the statutes of 33 Hen. 8, c.6, and 2 & 3 Mary, c.9, and it signifies a license to use unlawful games or to shoot in a gunne" (*Termes de la Ley*).

See BILL; BANNER.

PLACE. "House, room or other place" (Sunday Observance Act 1780 (c.49) s.1) includes a park or racecourse (*Culley v Harrison* [1956] 2 Q.B. 71; [1956] 3 W.L.R. 21; [1956] 2 All E.R. 254).

"A place . . . from which . . . liable to fall" (Factories Act 1961 (c.34) s.29) includes a place where a window cleaner is using a ladder, so that the section is complied with where the ladder provides secure foothold, and, if necessary, secure handhold (*Wrigley v British Vinegars* [1962] 3 W.L.R. 371).

"Place", within the meaning of Merchant Shipping Act 1894 (c.60) s.742: see *Humber Conservancy Board v Federated Coal & Shipping Co Ltd* [1928] 1 K.B. 492.

Where a ship was to "proceed to one or two safe ports, East Canada or Newfoundland, place or places as ordered by charterers and/or shippers", "place or places" meant actual loading spots or points within a port (*Stag Line v Board of Trade* [1950] 2 K.B. 194). See also para.(27).

"Place of abode" usually means the place of residence; "in Johnson's Dictionary 'abode' is defined to be 'habitation, dwelling, place of residence', and 'residence' is defined to be 'place of abode, dwelling'. A man's residence, where he lives with his family and sleeps at night, is always his place of abode in the full sense of that expression" (per Campbell C.J., *R. v Hammond*, 17 Q.B. 772). But see INMATE. See also per Gibson J., *R. v Fermanagh Justices* [1897] 2 Ir. 563, cited RESIDE.

"Place of abode" occurs frequently in the forms provided by the Acts for the Registration of Voters. What is a person's place of abode within the meaning of these Acts is "rather a question of fact than of law" (per Eric C.J., *Courtis v Blight*, 31 L.J.C.P. 48). That case relates to an objector's place of abode; and see thereon *Sheldon v Fletcher*, 17 L.J.C.P. 34; see also *Melbourne v Greenfield*, 7 C.B.N.S. 1. The place of abode of a person entitled to vote, need only be described in an overseer's list where the person has one, and it may be given as "travelling abroad" where the facts warrant that statement (*Walker v Payne*, 2 C.B. 12). In a notice of action, or other such like document, a solicitor's "place of abode" would be sufficiently given by his business address (*Roberts v Williams*, 5 L.J.M.C. 23), but such a requirement would not be complied with by giving the town in which the solicitor practices, e.g. "given under my hand at Durham" (*Taylor v Fenwick*, cited 7 T.R. 635, and referred to by Williams J., *Martins v Upcher*, 11 L.J.Q.B. 293). See also *Price v West London Investment Building Society* [1964] 1 W.L.R. 616.

In Summary Jurisdiction Act 1848 (c.43) s.1, "place of abode" did not include a lock-up shop: see *R. v Rhodes*, 85 L.J.K.B. 830; *R. v Braithwaite* [1918] 2 K.B. 319.

"Place of abode" (Landlord and Tenant Act 1927 (c.36) s.23(1)) was equivalent to "place of business" (*Stylo Shoes v Prices Taylors* [1906] Ch. 396).

"Place of abode" (Theft Act 1968 (c.60) s.25(1)). A person who lived in his car was properly convicted of an offence against this section when police found burglary tools

in the car after stopping it on the highway. When not at the site where the person abided the car was not his “place of abode” within the meaning of the section (*R. v Bundy* [1977] 1 W.L.R. 914).

“Place where the trade . . . is carried on” (Taxes Management Act 1970 (c.9) Sch.3 para.2) means the place where the taxpayer was carrying on the trade at the date when penalty proceedings are commenced, and not the place where the trade had been carried on during the relevant years of assessment (*R. v IRC, Ex p. knight* [1973] 3 All E.R. 721).

“Place of delivery”: see DELIVERY. See also, on s.68(4) of the Food and Drugs Act 1938 (c.56), *Evans v Rodgers* [1946] K.B. 512 (place of delivery of milk was the place of delivery by the producer to the person to whom he was directed to deliver it by the marketing board).

“Place of deposit”: see *Simpson v Proctor*, 33 S.L.R. 270, cited DEPOSIT.

“Places of educational value and interest”: see *R. v Lyon* [1922] 1 K.B. 232.

In Finance (New Duties) Act 1916 (c.11) s.1, includes a room and a window from which to view a procession in the street: see *Gibson v Reach* [1924] 1 K.B. 294. See ENTERTAINMENT.

“Place at which any person . . . works” (Construction (Working Places) Regulations 1966 (SI 1966/94) reg.6(2)). The load on a lorry was held to be a working place to which this regulation applied (*HM Inspector of Factories v The Cementation Co*, 1968 S.L.T. (Sh. Ct.) 75). In deciding whether a place of work has been made safe within the requirements of these regulations, it is the place qua place that has to be considered, and not the place qua operation carried on there (*Evans v Sant* [1975] 2 W.L.R. 95).

“Place of work” (Rent Act 1977 (c.42) Sch.15 para.5(1)). In assessing the suitability of alternative accommodation and its proximity to the tenant’s “place of work”, the court is not restricted to considering factories, offices or other specific premises. “Place of work” can mean the area within which the tenant worked; it being a matter of fact and degree as to where that place of work was located (*Yewbright Properties v Stone* (1980) 40 P. & C.R. 402).

A lift serving a number of private dwellings in a block of flats can be a “place of work” within the meaning of s.4(1) of the Health and Safety at Work Act 1974 (c.37) (*Westminster City Council v Select Management* [1985] 1 All E.R. 897).

A quarry road was not a “place . . . at which any person had to work” within the meaning of Mines and Quarries Act 1954 (c.70) s.109 (*English v Cory Sand & Ballast Co, The Times*, April 2, 1985).

“Place having a known and defined boundary” (Local Government Act 1858 (c.98) s.12) included an ecclesiastical district, under New Parishes Act 1843 (c.37), consisting of parts of two townships each of which townships each of which townships separately maintained its own poor and its own highways (*R. v Northowram*, L.R. 1 Q.B. 110). See also *R. v Hardy*, L.R. 4 Q.B. 117; *R. v Local Government Board*, L.R. 8 Q.B. 227.

“Loading places”, e.g. in para.19 of the River Plate Charter, is not the same as loading PORTS; it means loading spots (per Russell C.J., *Branchelow SS Co v Lamport*, 66 L.J.Q.B. 382). See also para.(13).

“Place of profit”: a trustee of a trust deed for securing the debentures of a company, who is appointed and paid, but not removable by, the company, holds a “place of profit under the company” (*Astley v New Tivoli* [1899] 1 Ch. 151). See OFFICE.

"Place appropriated to public religious worship" (Private Street Works Act 1892 (c.57)) did not include a piece of vacant land (*Ilford Corp v Mallinson*, 147 L.T. 37).

"Place of worship" (Places of Worship (Enfranchisement) Act 1920 (c.56) s.5); see *Stradling v Higgins* [1932] 1 Ch. 143.

"The place where the harmful event occurred" (Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (1968) art.5(3)). The European Court held that where they are different, the place could be either that where the act occurred or that where the damage was suffered (*Handelswekerij GJ Bier BV and Stichting Reinwater v Mines de Potasse d'Alsace SA* [1978] Q.B. 708).

"Place of business . . . in Great Britain" (Companies Act 1948 (c.38) s.412; now Companies Act 1985 (c.6) s.695). A company established a place of business in Great Britain if it carried on any part of its business there, however small. Thus the branch of a foreign bank can be a place of business for the purposes of this section (*South India Shipping Corp v Export-Import Bank of Korea* [1985] 2 All E.R. 219). The showing and storage of works of art at certain premises could be sufficient to establish those premises as a "place of business" of the owners, notwithstanding that there were also on the premises works of art belonging to others (*Cleveland Museum of Art v Capricorn International* (1989) 5 B.C.C. 860).

A field in which a car boot sale was held every Sunday was a "place" for the purposes of s.58 of the Shops Act 1950 (c.28) as the sale was an occurrence which had a sufficient degree of permanence and regularity. But the boot of the car of one of the unknown sellers was not (*Palmer v Bugler* (1989) 87 L.G.R. 382).

"The place where the employee was so employed" (Employment Protection (Consolidation) Act 1978 (c.44) s.81(2)(a)). This is not restricted to the place where an employee actually worked. It would also include any place where he might be contractually required to work (*Rank Xerox v Churchill* [1988] I.R.L.R. 280).

"Last-known place of abode": due service under s.196(3) of the Law of Property Act 1925 (c.20) or s.23(1) of the Landlord and Tenant Act 1927 (c.36) would be effected if the notice was left at the place, nearest to that in which the person was last known to have lived, to which a member of the public or a postman could go (*Trustees of Henry Smith's Charity v Kyriakou* (1989) 29 R.V.R. 106).

"Place of performance of the obligation" (Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 art.5(1)) refers to the place of performance of the obligation which formed the actual basis of the proceedings. "Obligation" refers to the contractual obligation forming the basis of the legal proceedings (*Medway Packaging v Meurer Maschinen GmbH* [1990] 2 Lloyd's Rep. 112).

(Civil Jurisdiction and Judgment Act 1982 (c.27) art.5(1).) The expression "place of performance or the obligation in question" meant the intended place of performance of the supposed obligation (*Kleinwort Benson Ltd v Glasgow City Council* [1996] 2 All E.R. 257).

"Place of work" (Local Government Act 1972 (c.70) s.79(1)). A retired person whose only work consisted of his duties as a local councillor was entitled to claim that the council offices were his "place of work" (*Parker v Yeo*, 90 L.G.R. 645).

"Place of business": Stat. Def., Companies Act 1985 (c.6) s.744.

"Place of business" (Firearms Act 1968 (c.27) s.33(3)). For the purposes of this Act the "place of business" of a firearms dealer included the place where he stored firearms and ammunition (*R. v Bull*, *The Times*, August 18, 1993).

PLACE

The cab of a fork-lift truck was a “place” within the meaning of the Factories Act 1961 (c.34) s.29(1) and “plant” and “place” were not to be regarded as mutually exclusive (*Gunion v Roche Products, The Scotsman*, October 19, 1994).

“Place where the harmful event occurred” (Civil Jurisdiction and Judgments Act 1982 (c.27) art.5(3)). Since the Brussels Convention 1968 art.5 did not define “harmful event”, it was a matter which should be determined by the national court applying its substantive law (*Shevill v Presse Alliance SA* [1996] 3 All E.R. 929).

The definition could not encompass any place where the adverse consequences of an event that had already caused damage elsewhere could be felt and so did not include the place where a victim claimed to have suffered financial loss consequential on initial damage arising and suffered by him in another contracting state (*Marinari v Lloyds Bank Plc* [1996] 2 W.L.R. 159).

“Place” (Construction (Working Places) Regulations 1966 (SI 1966/64), reg.6) had to be given its ordinary meaning and although not confined to a permanent structure it would be incompatible with the ordinary use of language to describe the dumper truck where the plaintiff had sustained his accident as his “place of work” (*Sweeney v MacKenzie Construction Ltd* (1997) Rep. L.R. 35).

“I hold that a child is not ‘placed’ for adoption until he begins to live with the proposed adopters or, if he is already living with them in their capacity as foster carers, when the adoption agency formally allows him to continue to live with them in their fresh capacity as prospective adopters. In my view such is the natural construction of the verb ‘place’, which the Shorter Oxford English Dictionary defines as ‘put or set in a particular place, position or situation’. It is thus a construction which, in the usual case in which the child is not already living with the proposed adopters, requires straightforward reference to a readily discernible fact, namely whether he has begun to live with them. The construction of Coulson J seems to me, by contrast, to make identification of the date of placement more difficult; and to the first meeting between the adopters and the child he attaches a significance which I find hard to justify in logic. Regulation 35(2) of the Adoption Agencies Regulations 2005, SI 2005 No. 389, requires an adoption agency to send to a prospective adopter with whom it has decided to place a child an ‘adoption placement plan’, which, by para.3 of Sch.5, must identify the ‘[d]ate on which it is proposed to place the child for adoption with the prospective adopter’. On the plan sent to the adopters in the present case Coventry duly identified 23 February 2011 as ‘PLACEMENT DAY’ and I consider that they were correct to do so.” (*Coventry City Council v PGO* [2011] EWCA Civ 729.)

See also ESTABLISH.

“Made available as a place of work”: see NON-DOMESTIC.

“Place of burial”: see BURIAL.

“Place of destination”: see DESTINATION.

“Place of discharge”: see PORT.

“Place of export”: see EXPORT.

“Place of pleasure”: see PLEASURE.

“Place dedicated to public use”: see PUBLIC USE.

“Place of business”: Stat. Def., Civil Jurisdiction and Judgment Act 1982 (c.27) s.42.

“Place of employment”: Stat. Def., Social Security Act 1975 (c.14) s.19.

See CITY; DIVISION; MARKET PLACE; PARISH; PLY; PORT OR PLACE; STREET OR PLACE; CONVENIENT PLACE; PUBLIC PLACE.

For an extensive list of earlier authorities, see Stroud's Judicial Dictionary, 5th edn, Vol.4, pp.1939–1945.

PLACE (TO). A device for catching fish was “placed” within the meaning of Salmon Fishery Act 1873 (c.71) s.15—see Salmon and Freshwater Fisheries Act 1923 (c.16) s.36—by merely raising the shuttles of a weir constructed in 1838, and so using a grating, that had always been part of the weir, as a trap to catch fish, that being the intended use of such grating from the time of construction of the weir (*Briggs v Swanwick*, 10 Q.B.D. 510).

An agreement “to place” shares in a company is not equivalent to an agreement to take them; and the contractor is thereby liable, not as a contributory, but only in damages for breach of contract (*Gorrissen's Case*, 8 Ch. 507). See Companies Act 1948 (c.38) ss.25, 212, 213. See UNDERWRITE.

PLACE OF PUBLIC RELIGIOUS WORSHIP. A Mormon Temple open only to Mormons in good standing is not a place of public religious worship within the meaning of para.11(1)(a) of Sch.5 to the Local Government Finance Act 1988 (*Gallagher (Valuation Officer) v Church of Jesus Christ of Latter Day Saints* [2008] UKHL 56).

PLACE OUT. “Place out” a parish apprentice, in recital to Parish Apprentices Act 1816 (c.139) s.9: see PUT AWAY, with which phrase “place out” seems synonymous.

“An assignment imports a transfer of the services of the apprentice for the residue of his term. But an apprentice may be said to be ‘placed out’ when the master consents to the apprentice serving another individual, so as to become subject to the control of that other” (per Bayley J., *R. v Shipton*, 8 B. & C. 96).

PLACED. “As the *Oxford English Dictionary* observes, ‘place’ is ‘often a mere synonym of ‘put’. In ordinary discourse when asking ‘Where shall I park?’, the answer may well be, ‘Put your car over there’ . . . In our judgment ‘place’ is such a colourless, general word that it throws no light on the shades of meaning to be given to ‘goods’.” (*Spring House (Freehold) Ltd v Mount Cook Land Ltd* [2002] 2 All E.R. 822 at [11], CA per Ward and Rix L.JJ.)

PLACER MINING. “Lawfully occupied for placing mining purposes” in Placer Mining Act 1906 s.17: see *Seguin v Boyle* [1922] A.C. 462. See also *Chappelle v The King* [1904] A.C. 127, as to the rights of a placer miner to the renewal of his grant.

PLAGIARISM. For discussion of what amounts to plagiarism see *Mustafa, R. (on the application of) v The Office of the Independent Adjudicator for Higher Education* [2013] EWHC 1379 (Admin).

PLAIN VANILLA CONTRACT. Stat. Def., Corporation Tax Act 2009 s.708.

PLAINT. A “plaint” is the process by which proceedings in the county court are generally commenced there are a few exceptions otherwise provided for which commence by petition.

Cp. WRIT. See PROCESS.

PLAINTIFF. “Position of plaintiff” (R.S.C. Ord.23 r.1(3)). A defendant is not “in the position of plaintiff” in interlocutory proceedings begun by him (*Re B. (Infants)* [1965] 1 W.L.R. 946). Nor is a foreign person, joined as a defendant, who raises an issue which is ordered to be disposed of as a preliminary issue (*Visco v Minter* [1969] P. 82).

“Plaintiff” in the Supreme Court of Judicature (Consolidation) Act 1925 (c.49) s.225 means the plaintiff in the proceedings as a whole and a defendant who makes an

interlocutory application does not become the plaintiff against whom an application can be made for security for costs (*CT Bowring & Co (Insurance) Ltd v Corsi Partners Ltd* [1994] 2 Lloyd's Rep. 567).

Companies Act 1985 (c.6) s.726: see OTHER.

PLAN. The "plan" to be submitted to a local authority, of works to be done, does not mean something merely showing "method" or "manner", but means a "map" or its equivalent which will enable the authority to judge whether what is proposed shall be allowed to proceed; and therefore under Waterworks Clauses Act 1847 (c.17) s.31 the position and depth of proposed pipes ought to have formed part of the "plan" (*Edgeware v Colne Valley Water Co*, 46 L.J. Ch. 889; *East Molesey v Lambeth Waterworks Co* [1892] 3 Ch. 289). But under Public Health Act 1875 (c.35) s.157 a local authority was not entitled to reject building plans solely because they did not disclose a complete system of sewage (*R. v Tynemouth* [1896] 2 Q.B. 451). See also, as to plans under Public Health Acts, *Masters v Pontypool*, 9 Ch. D. 677; *James v Masters* [1893] 1 Q.B. 355; *Fulford v Blatchford*, 80 L.T. 627; *Harrogate v Dickinson* [1904] 1 K.B. 468; *R. v Tynemouth* [1911] 2 K.B. 361.

"Plans showing the extent of the previously existing domestic building in its several parts" (London Building Act 1894 (c. ccxiii) s.43(1)) meant a complete set of plans showing what the old building was, not a mere ground plan (*Paynter v Watson* [1898] 2 Q.B. 31, cited *DEVIATE*).

"Plan" as used in a statute: see *Edinburgh Tramways Co v Black*, L.R. 2 Sc. App. 336.

As to the effect of a plan in the parcels in a conveyance, see *Brown v Wales*, L.R. 15 Eq. 142; *Re Lindsay and Forder*, 72 L.T. 832; *Re Cadogan*, 11 T.L.R. 477; *Laybourn v Gridley* [1892] 2 Ch. 53; *May v Platt* [1900] 1 Ch. 616, cited *ESTATE AND INTEREST*; where there is a variance, a plan will generally control the written description (*Nene Valley Commissioners v Dunkley*, 4 Ch. D. 1). See hereon *Gordon Cumming v Houldsworth* [1910] A.C. 537; *Re Sansom & Narbeth* [1910] 1 Ch. 741; *Egmont v Smith*, 6 Ch. D. 469; *Re Simmons* [1908] 1 Ch. 452. *Secus*, where the written description is unambiguous (*Horne v Struben* [1902] A.C. 454; *Kenny v La Barte* [1902] 2 I.R. 63, following *Dublin & Kingstown Railway v Bradford*, 7 I.R.C.L. 57, and *Denny v Corrigan* [1902] I.R. 63n). See also *Gogarty v Hoskins* [1906] 1 Ir. 183, cited *INTENDED*.

Deposited plans of a railway company were not binding on the company except so far as they were incorporated in the Special Act (*North British Railway v Tod*, 12 Cl. & F. 722; *R. v Caledonian Railway*, 16 Q.B. 19). Errors therein might be corrected (Railways Clauses Consolidation Act 1945 (c.20) s.7).

The proprietary right in an architect's plans is in the building owner, and not in the architect (*Gibbon v Pease* [1905] 1 K.B. 810, following *Ebby v McGowan*, 2 Hudson 7).

Notification of a Site of Special Scientific Interest is not a plan for the purposes of art.6(3) of Council Directive (EEC) 92/43 (*R. (Boggis) v Natural England* [2009] EWCA Civ 1061).

"The words 'plan' and 'project' are not defined within the 2010 Regulations, nor are they defined in the Habitats Directive. However, there was no dispute between the parties that a 'project' concerns a concrete proposal whilst a 'plan' is something at a more general level. That is consistent with the approach in ODPM Circular 06/2005 (Biodiversity and Geological Conservation—Statutory Obligations and their Impact

within the Planning System) concerned with earlier regulations (the Habitats Regulations 1994). ‘Other projects’ extended beyond those requiring planning permission to ‘a current application for any kind of authorisation, permission, licence or other consent’ (see paras 14 and 16).” (*Forest of Dean Friends of the Earth v Forest of Dean District Council* [2014] EWHC 1353 (Admin).)

See CHART.

PLAN OR PROJECT. For a discussion of the meaning of the term “plan or project”, see *Landelijke Vereniging* (Case C-127/02) [2005] 2 C.M.L.R. 31, ECJ.

PLANNING. “It was not disputed, at least for these purposes, that s.106A(6)(b) and (c) meant that the authority could discharge or vary the agreement if it no longer served a useful ‘planning’ purpose, or could serve it equally well in a different form. That word, submitted Mr Harwood, was necessarily implied since the agreement could only be made in the first place for a planning purpose, which is correct, and could only be enforced by a public body acting for a public purpose under the Planning Acts. It was not exercising some private power or purely contractual power. Sullivan J had so held in *R (Batchelor Enterprises Ltd) v North Dorset District Council* [2003] EWHC Admin 3006. I am prepared for present purposes to accept that point, but I note that ‘planning’, the word implied, very broad though it is, may lead to a debate about what constitutes a planning consideration for these purposes as opposed to some other useful public purpose which could be pigeonholed under some other head, or even a private purpose such as the protection of private views, which may show the implied restriction to be unjustified. Sullivan J also relied on Ministerial guidance which in fact contradicts this interpolation since it said that an agreement should ‘normally’, rather than ‘always’, be discharged when there is no planning purpose to be served by its continuance. The learned editors of the Planning Encyclopaedia, without explanation, and both before and after Batchelor, have said that no planning purpose was necessary. Curiously, there is no express obligation to discharge if conditions s.106A(6)(b) or (c) are satisfied, though ‘may determine’ could be so interpreted. . . . Since there is no need for a connection between the agreement and the permission, in the first place, in order for the agreement to be lawful and enforceable, it is quite impossible to imply into s.106A(6)(b) and (c) on variation or discharge, a requirement that the ‘useful planning purpose’ must be one related to the permission itself. Since there is no need for the agreement to have any connection at all to a permission or a particular development, the variation or discharge power cannot be constrained in a way in which the power to enter the agreement in the first place is not. There is nothing in the Act which requires variation or discharge for want of useful planning purpose to be judged by reference to the development to which the agreement was related. There is nothing unlawful about enforcing an agreement in circumstances which would not warrant its variation or discharge.” (*R. (on the application of Renaissance Habitat Ltd) v West Berkshire District Council* [2011] EWHC 242 (Admin).)

PLANNING PERMISSION. For the purposes of the Town and Country Planning Act 1971 (c.78) s.290, “planning permission” is the written notice of the grant and not the resolution of the planning authority (*Co-operative Retail Services v Taff-Ely BC* (1978) 38 P. & C.R. 156).

PLANNING SCHEME. Stat. Def., Betting and Lotteries Act 1934 (c.58) s.20(1); Restriction of Ribbon Development Act 1935 (c.47) s.24(1); Housing Act 1936 (c.51) s.188(1); Public Health Act 1936 (c.49) s.343(1); Town and Country Planning Act 1947 (c.51) s.119(1).

PLANNING UNIT. The question of whether a shop was an appropriate “planning unit” was a question of fact and degree for the Secretary of State to determine in accordance with the rule in *Burdle v Secretary of State for the Environment* [1972] 1 W.L.R. 1207 (*Church Commissioners for England v Secretary of State for the Environment* (1996) 71 P. & C.R. 73).

PLANT. A bequest of “plant and goodwill” passes the house of business held at rack-rent, also trade fixtures, benches, presses, and implements of trade, but not stock-in-trade, or household furniture and effects of the ordinary kind (*Blake v Shaw*, 8 W.R. 410). See GOODWILL.

“Plant used in or about the premises” was held to include motor lorries garaged at a company’s premises and used there for the purpose of bringing to and taking from those premises the company’s goods: see *National Provincial Bank of England v Charnley* [1924] 1 K.B. 431.

“‘Plant’ and ‘machinery’ are two quite different things” (per Kekewich J., *Re Brooke*, 64 L.J. Ch. 27). On a contract for the sale of a freehold brewery which provided that its “fixed plant and machinery” should be paid for by valuation, Kekewich J. held that, “speaking generally, ‘machinery’ includes everything which by its action produces or assists in production; and that ‘plant’ might be regarded as that without which production could not go on . . . and included such things as brewer’s pipes, vats, and the like”: and that therefore a chimney shaft, which was built just outside the boiler-house but formed no part of it, a double-boarded partition, forming a malt and grain store, and staging, erected by placing joists on the stout bearers built into the walls, were not to be included in the valuation (*Re Nutley and Finn* [1894] W.N. 64).

Rating and Valuation Act 1925 (c.90) s.24: included whatever apparatus or instruments were used by a business man in carrying on his business; did not include stock-in-trade, nor the premises where the business was carried on, nor lamps and similar fitments (*Lyons (J) & Co v Att-Gen* [1944] Ch. 281). Rotating cylinders with their supporting rollers were kilns and plant within the Plant and Machinery (Valuation for Rating) Order 1927 (No.479) class 4 (*British Portland Cement Manufacturers v Thurrock Urban DC*, 66 T.L.R. (Pt 2) 1003).

“Plant” (General Rate Act 1967 (c.9) s.21(1)(b)). The word “plant” has the same meaning in both rating and revenue statutes, but in rating cases the subject matter can be considered piecemeal in a way not permissible in revenue cases. Thus, whereas dry-docks are structures and rateable, the gates, pipes, pumps and winches are “plant” and non-rateable (*Manchester Marine v Duckworth* [1973] 1 W.L.R. 1431).

“Plant” (Income Tax Act 1952 (c.10) ss.279(1), 280) included moveable office partitioning which was capable of qualifying for initial and annual allowances under the sections in respect of capital expenditure incurred in their provision (*Jarrold v John Good & Sons* [1963] 1 W.L.R. 214). Capital expenditure on the excavations for, and the concreting of a dry dock was held to qualify for an allowance as “plant” within the meaning of s.279(1) on the grounds that it could not be treated in isolation from the equipment installed to operate the dock (*IRC v Barclay Curle & Co* [1969] 1 W.L.R. 675).

"Plant" (Finance Act 1954 (c.44) s.16(3)(c)) included knives and lasts, with an average life of three years, as used by shoe manufacturers (*Hinton v Maden & Ireland* [1959] 1 W.L.R. 875). Wallpaper pattern books were held not to be "plant" within this section (*Rose & Co v Campbell* [1968] 1 W.L.R. 346). But designs acquired for use on wallpaper did qualify under this section (*McVeigh v Arthur Sanderson & Sons* [1969] 1 W.L.R. 1143).

"Plant" (Protection of Eyes Regulations 1938 (S.R. & O. (1938) No.654 Sch.) means any object of a general kind which is riveted or bolted and from which, therefore, cold rivets or bolts may be cut out or cut off (*Watts v Enfield Rolling Mills (Aluminium)* [1952] 1 T.L.R. 733).

"Machinery or plant" (Building (Safety, Health and Welfare) Regulations 1948 (SI 1948/1145) reg.2(1)), prima facie includes scaffolding; but the regulations do not apply to the dismantling of a scaffold (*Sexton v Scaffolding (Great Britain)* [1952] 2 T.L.R. 986).

"Plant" (Factories Act 1961 (c.34) s.31(4)) denotes any part of the apparatus in a factory used in carrying on the industrial process undertaken on those premises. An article on those premises for the purpose of being subjected to that industrial process, e.g. a safe being cut up for scrap, is not "plant" (*Haigh v Ireland C.W.* [1974] 1 W.L.R. 43).

"Plant" (Finance Act 1971 (c.68) ss.41(1), 44(1); now Capital Allowances Act 1990 (c.1) ss.22(1), 24(1)). Glass shop fronts and items of internal decoration, installed in fast-food restaurants for the purpose of promoting trade, were not "plant" within the meaning of this section (*Wimpey International v Warland; Associated Restaurants v Same* [1989] S.T.C. 273). Expenditure on constructing permanent quarantine kennels for cats and dogs was held not to have been incurred on the provision of "plant" within the meaning of this section (*Carr v Sayer* [1992] S.T.C. 396). Expenditure by wholesaler distributions on installing mezzanine platforms in their single-storey warehouses so as to increase storage space was incurred on "plant" within the meaning of this section, but ancillary lighting required as a consequence of the installation did not qualify (*Hunt v Henry Quick; King v Bridisco* [1992] S.T.C. 633).

A carillon clock was not "plant and machinery" under s.336 (*Kennedy v Secretary of State for Wales* [1996] E.G.C.S. 17).

An artificial all-weather racetrack was not plant for the purposes of s.24 of the Capital Allowances Act 1990 (*Shove (Inspector of Taxes) v Lingfield Park 1991 Ltd* [2003] EWHC 1684, Ch).

A jetty is not "plant", as used by swimmers (*R. (Hampstead Heath WSC) v Corp of London* [2005] EWHC 713 at [54] (Admin)).

Stat. Def., Food and Environment Protection Act 1985 (c.48) s.24.

Stat. Def., Health and Safety at Work Act 1974 (c.37) s.53.

"Machinery or plant": Stat. Def., Industry Act 1972 (c.63) s.6.; Industrial Development Act 1982 (c.52) s.6.

See ACTUAL USE OR OCCUPATION; MACHINERY.

PLANT (HORTICULTURAL, ETC.). "Planting" (Farm Produce Marketing Act, R.S.O. 1960 (c.137) s.18(1)(b)) means the planting of plants in the fields and does not cover the propagation of seeds in greenhouses (*Robbins v Ontario Tobacco Growers Marketing Board*, 43 D.L.R. (2d) 413).

Stat. Def., Theft Act 1968 (c.60) s.4(3); Criminal Damage Act 1971 (c.48) s.10(1).

"Variety": Stat. Def., Plant Varieties Act 1997 (c.66) s.1(3).

PLANT AND MACHINERY. For discussion of the history and application of the phrase “plant and machinery” see *HM Revenue and Customs v The Executors of Lord Howard of Henderskelfe* [2014] EWCA Civ 278.

PLANT OR MACHINERY LEASE. Stat. Def., Capital Allowances Act 2001 s.70K inserted by Finance Act 2006 Sch.8 para.7.

PLANTARIA. A plantaria or greenhouse used for nurturing and protecting growing plants but which also allowed customers to walk among benches where plants were growing was not “plant” for capital allowance purposes because it formed part of the premises in which the business was carried on (*Gray (Inspector of Taxes) v Seymours Garden Centre (Horticulture)* [1995] S.T.C. 706).

Town and Country Planning Act 1990 (c.8) s.336.

PLANTATION. Is a district, settlement, or colony (Jacob); see also 1 BL. COM. 106, 107.

“Plantation’, in its common known signification, is applicable only to colonies abroad where things are grown, or which were settled for the purpose principally of raising produce” (per Ellenborough C.J., *Lubbock v Potts*, 7 East 455); the channel islands are not “plantations” (*Lubbock*), but, semble, may almost “be regarded as a separate nationality” (per Farwell J., *Re Johnson* [1903] 1 Ch. 834, cited CHANNEL ISLANDS).

The devise of a “plantation” will, semble, pass also the stock, implements, utensils, etc. upon it (*Lushington v Sewell*, 1 Sim. 435).

The “natural and unimproved state” of land “used only for a plantation or wood” (Rating Act 1874 (c.54) s.4(a)) included the enhanced value of the land owing to game being preserved on it (*Eyton v Mold*, 6 Q.B.D. 13). See also, as to s.4, *Liverpool v Chorley Assessment Committee* [1913] A.C. 197, cited BENEFICIAL. See SALEABLE UNDERWOOD.

See WOOD.

PLASTERING. Gauging plastering, i.e. by mixing plaster of paris with the plaster to make it dry more quickly, is “wholly different from ordinary plastering” (per Martin B., *Wallis v Robinson*, 3 F. & F. 307).

PLATE. “Plate” will not pass plated articles where the testator is possessed of solid silver ones (*Holden or Holder v Ramsbottom*, 7 L.T. 735).

In *Field v Peckett* (30 L.J. Ch. 813), it was held that “plate and china” would carry snuff-boxes of gold, silver, and china; and, under particular circumstances, a gold watch passed as “plate” (*Spencer v Spencer*, cited in *Tempest v Tempest*, 2 K. & J. 644). But in *Allen v Allen* (Moseley, 112) neither a watch nor a gold-headed cane passed as “plate”; see also per Channel J., *Goldsmith’s Co v Wyatt*, below. See also *Domville v Taylor*, 32 Bea. 604.

Bequest of plate and paintings as heirlooms: see *Re Johnston, Cockrell v Essex*, 26 Ch. D. 538, cited SUCCESSORS.

A bequest of “all my plate” includes electro-plate and Sheffield plate: *Re Grimwood* [1946] Ch. 54.

It was to “trade in or sell” plate, within Revenue Act 1867 (c.90) s.1, for a tea dealer to deliver to his customers coupons which when accumulated would entitle the holders of them to participate in the distribution of plate prizes, e.g. gold watches (*Scott v Solomon* [1905] 1 K.B. 577).

“Plate” is a more or less ambiguous word which has very different meanings in different contexts; in the statutes requiring the hall-marking of imported gold or silver

“plate” (Customs Act 1842 (c.47) ss.59, 60; Revenue Act 1883 (c.55) s.10; Hall-marking of Foreign Plate Act 1904 (c.6)), a gold or silver watch was “gold or silver plate”; “plate”, in this connection, was not confined to articles of table use and things of that sort (*Goldsmith’s Co v Wyatt* [1907] 1 K.B. 95, reversing Channell J., 74 L.J.K.B. 822). “Nor are articles (e.g. cigarette cases) manufactured of gold or silver less within these statutes because the metal is used as the foundations of enamel work, however great may be the merit of the enamel work compared with the value of the metal employed” (per Parker J., in *Falberge v Goldsmith’s Co*, 80 L.J.Ch. 97).

Stat. Def., Copyright Act 1911 (c.46) s.35; Copyright Act 1956 (c.74) s.18(3).

See also SET.

PLATINUM. Stat. Def., Finance (No.2) Act 1975 (c.45) Sch.7.

PLATFORM. “Temporary Platform”: see TEMPORARY.

PLAY. “Haunting, resorting, and playing”: see *Murphy v Arrow* [1897] 2 Q.B. 527, cited FOUND.

“Playing a game of chance” (Betting and Gaming Act 1960 (c.60) s.28; Betting, Gaming and Lotteries Act 1963 (c.2) s.55). There is no such “playing” unless the players do something by way of active participation in the game, as by exercising some degree of skill or some choice or by doing some physical act (*DPP v Regional Pool Promotions* [1964] 2 Q.B. 244). Participation in postal bingo is not “playing a game of chance” within the meaning of this section (*Armstrong v DPP* [1965] A.C. 1262).

Stat. Def., Theatres Act 1968 (c.54) s.18.

See DRAMATIC; THEATRE; PERFORMANCE OF A PLAY; STAGE PLAY.

PLAYER. “Player” (Betting, Gaming and Lotteries Act 1963 (c.2) s.32(1)) can include a syndicate (*Metropolitan Police Commissioner v Weston* [1969] 1 W.L.R. 847).

(Betting, Gaming and Lotteries Act 1963 (c.2) s.55(1).) “The meaning of ‘player’ in relation to a game of chance includes any person taking part in the game against whom other persons taking part in the game stake, play or bet. Players must, therefore, be persons who take part in one and the same game” (per Lord Morris in *Adcock v Wilson* [1969] A.C. 326). The “players” pool in the game of “super legalite” was held to be a “player” within the meaning of this section (*DPP v Essoldo Circuit (Control)* [1966] 1 Q.B. 799).

Stat. Def., Betting and Gaming Act 1960 (c.60) s.28(1); Betting, Gaming and Lotteries Act 1963 (c.2) s.55(1).

PLAYING CARDS. Stat. Def., Customs and Excise Act 1952 (c.44) s.224(5); “pack of playing cards”, 1952 Act. See CARDS.

PLEADING. (R.S.C. Ord.18 r.19.) An ordinary application, as defined by r.7(2) of the Insolvency Rules 1986 (SI 1986/1925), was not a “pleading” within the meaning of r.19 (*Re Port (a Bankrupt)* (No.516 of 1987)).

“Mode of pleading”: see PRACTICE.

See POINT OF SUBSTANCE.

PLEASE. A gift to a parish priest for a school “or for whatever other purpose he pleases”, is a gift to the donee for his own benefit (*Re Harbison* [1902] 1 I.R. 103). Cp. THINK FIT.

PLEASURE. A devise to A to give and sell at his pleasure carries the fee (Sug. Pow. 104; see also DISCRETION).

PLEASURE

"Pleasure boat", in Thames Conservancy Act 1894 (c. clxxxvii) s.3, "includes any ship, launch, house boat, boat, randan, wherry, skiff, dingy, shallop, punt, canoe, or yacht, however navigated, not being solely used as a tug or for the carriage of goods, and not being certified by the Board of Trade as a passenger steamer to carry 200 or more passengers". See hereon *Queens of the River SS Co v Easton*, 22 T.L.R. 419; affirmed, 23 T.L.R. 478.

"Pleasure fair" (Public Health Act 1961 (c.64) s.75; Betting, Gaming and Lotteries Act 1963 (c.2) Sch.6 para.4, as substituted by the Gaming Act 1968 (c.65) s.53 Sch.11 Pts I, II). The Court of Appeal held that premises used for prize bingo cannot be subject to a blanket resolution of a local authority not to grant permits for such premises, on the grounds that they are a "pleasure fair" within the meaning of Sch.6 para.4 of the 1963 Act ([1976] Q.B. 540). But the House of Lords, while affirming that a local authority may not make blanket resolutions not to grant permits for amusements with prizes, with or without gaming machines, held that the definition of "pleasure fair" in s.75 of the 1961 Act is not applicable to prize bingo (*Walker v Leeds City Council*; *Greenwich LBC v Hunt*; *Lewisham LBC v Hunt* [1978] A.C. 403).

A "pleasure ground" is a ground for recreation and enjoyment, including accessories conducive to that object; therefore, a conservatory, a museum, and a library, "into which people may turn if the weather becomes unfavourable", came within "public walks and pleasure grounds" (Public Health Act 1848 (c.63) s.74), which a local authority might be authorised to provide; *secus*, of town buildings generally (*Att-Gen v Sunderland*, 2 Ch. D. 634).

"Pleasure ground" in s.22(1) of the Electricity (Supply) Act 1919 (c.100) is confined to ground specifically intended to give pleasure to people, and does not extend to all land on which persons carry on pleasurable activities. It does not therefore include moorland adapted and used by members of a gliding club (*Central Electricity Generating Board v Dunning* [1970] Ch. 643).

In Telegraph Act 1863 (c.112) s.21: see *Stevens v National Telephone Co Ltd* [1914] 1 I.R. 9, where it was held that a "pleasure ground" to come within the section must have had some equipment of a more or less permanent character such as would be of service to person frequenting it for purposes of recreation.

"Pleasure ground" (Housing Act 1936 (c.51) s.75). The mere fact that a vacant piece of land in the neighbourhood of a house was sometimes used to procure amusement for neighbours or their children was not enough to constitute it a pleasure ground (*Payne v Minister of Health*, 158 L.T. 523). The pleasure ground should be something in the nature of a park and connected with the amenity or convenience of a house (*R. v Minister of Health, Ex p. Waterlow & Sons Ltd* [1946] K.B. 485).

Used in a motor insurance policy in contradistinction to business (*Piddington v Co-operative Insurance Society* [1934] 2 K.B. 236). See also *Wood v General Accident, Fire & Life Assurance Corp*, 65 T.L.R. 53.

"Pleasure craft": Stat. Def., "any ship of a kind primarily used for sport or recreation" (para.21(6) of Sch.14 to the Finance Act 2000 (c.17)).

"Licence of pleasure": see PROFIT À PRENDRE.

PLEASURE CRAFT. Stat. Def., "any ship of a kind primarily used for sport or recreation" (Income Tax Act 2007 s.194(8)).

PLEDGE. "The contract of pledge is a bailment, or delivery, of goods and chattels by one man to another to be held as a security for the payment of a debt or the performance of some engagement, and upon the express or implied understanding that

the thing deposited is to be restored to the owner, as soon as the debt is discharged or the engagement has been fulfilled. The thing deposited as a security is called a pawn or pledge; the party making the deposit, the pawnor or pledgor; and the person who receives it into his possession, the pawnee or pledgee. The contract is to be distinguished from the contract of hypothecation by the transfer of possession, or the actual delivery, of the thing intended to be charged to the creditor, and from the contract of mortgage by the absence of a transfer of the ownership or right of property thereof to the pawnee during the continuance of the trust" (Add. C. (11th edn), 817). See *Bristol & West of England Bank v Midland Railway* [1891] 2 Q.B. 653; Jacob. See also *North Western Bank v Poynter* [1895] A.C. 56; *Blundell-Leigh v Attenborough* [1921] 3 K.B. 235; *Re David Allester Ltd* [1922] 2 Ch. 211.

In Factors Act 1889 (c.45) s.2(5), "pledge" includes any contract pledging, or giving a lien or security on goods—whether in consideration of an original advance or of any further or continuing advance, or of any pecuniary liability". For definitions relating to pledges as affected by this Act, see BOUGHT; BUY; DELIVERY; DISPOSITION; DOCUMENT; FACTOR; MERCANTILE AGENT; MORTGAGE; PERSON; SALE. See also *Re Gorter v Attenborough*, 21 T.L.R. 19, cited MERCANTILE AGENT.

Stat. Def., Consumer Credit Act 1974 (c.39) s.189(1).

PLENARY. Plenary proceedings and judgment: see *Nouvion v Freeman*, 15 App. Cas. 1, cited REMATE.

PLENE ADMINISTRAVIT. This is a plea by an executor or administrator that he has fully and duly administered the deceased's estate, and has therefore nothing in his hands with which to satisfy the plaintiff's demand: see hereon 2 Wms. Exs. (12th edn), 1240 et seq.

PLENUM PARLIAMENTUM. See *St. John's Peerage Claim* [1915] A.C. 282, cited FULL.

PLIES FOR HIRE. See PLY.

PLIGHT. "Plight is an old English word, and here (s.357, Litt.) signifieth not only the estate but the habit and qualities of the land, and extendeth to rent charges, and to a possibility of dower. See s.289, where plight is taken for an estate or interest of and in the land itself, and extendeth not to a rent charge out of the land" (Co. Litt. 221B).

PLOUGH. "Beasts of plough": see BEASTS.

"Plough-bote": see BOTE.

PLOUGHING. In a reference for valuation of "ploughing and sowing", all expenses incidental to the preparation of land for sowing are included (*Branscombe v Rowcliffe*, 6 C.B. 523); see thereon for what was allowed for "ploughing".

Stat. Def., Agricultural Development Act 1939 (c.48) s.38.

PLOW-LAND; PLOUGHLAND. "'Plow-land' and a 'hide of land' are *synonyma*, and are collective words. And, therefore, by the grant of *carucatam* or *hidam terræ*, or of a plow-land, or a hide of land, may pass 100 acres of land, meadow and pasture, and the houses thereupon; but it doth properly intend as much land as one plow can till in a year" (Touch. 93). See HIDE; CARUCATA; JUGUM.

PLUG. In Metropolitan Fire Brigade Act 1865 (c.90) s.32, and Metropolitan Water Act 1871 (c.113) s.34, "plug", or "fireplug" includes "hydrant, and all other apparatus necessary or proper, in connection with the company's pipes, for supply of water in case of fire". See hereon *London CC v East London Waterworks Co* [1900] 1 Q.B. 330.

PLUNDER

PLUNDER. "Whosoever shall plunder or steal any part of any ship or vessel which shall be in distress" (Larceny Act 1861 (c.96) s.64): "I do not know that this word 'plunder' has any special legal significance" (Steph. Cr. (4th edn), 225, fn.5); the word was not used in Larceny Act 1916 (c.50) s.15(3).

PLURAL. See SINGULAR.

PLURALITY. "Plurality is the holding of two or more benefices by one person": see *Re Macnamara*, 55 S.J. 499; *Elcho v Andrews* [1910] 1 Ch. 706; see also Pluralities Act 1838 (c.106).

PLY. To "ply" a passenger steamer within Merchant Shipping Act 1854 (c.104) s.318 (see Merchant Shipping Act 1894 (c.60) s.281(3)) means to "ply for hire" (*R. v Ipswich Justices*, 5 L.T.R. 405); see hereon per Coleridge C.J., *R. v Southport* [1893] 1 Q.B. 359.

A steam vessel "plies between" London Bridge and the Nore Light (Smoke Abatement (London) Act 1856 (c.107) s.1) whilst she is travelling for hire between those boundaries, though she sometimes goes beyond them (*Walker v Evans*, 29 L.J.M.C. 22).

A hackney carriage "plies for hire" within Metropolitan Public Carriage Act 1869 (c.115) s.7 if, without word or gesture, it solicits passengers in a railway station (*Clark v Stanford*, L.R. 6 Q.B. 357; *Allen v Tunbridge*, L.R. 6 C.P. 481); *secus*, under the previous Act (London Hackney Carriage Act 1831 (c.22)), because in that Act the offence of unlicensed plying was restricted to a "public street or place", which a railway station is not (*Case v Storey*, L.R. 4 Ex. 319; *Skinner v Usher*, L.R. 7 Q.B. 423, cited PLACE). So, where a livery-stable keeper rented an office at Victoria Station and also ground within the station on which he kept superior carriages ready for use but which carriages could only be hired at the office; held, that was "plying for hire" within Metropolitan Public Carriage Act 1869 s.7 (*Foinett v Clark*, 41 J.P. 359). Motor-cars waiting at standings to which the public did not have access, and in which there was no indication that the cars were for hire, were not plying for hire within the section (*Cogley v Sherwood*; *Car Hire Group (Skyport) v Same*; *Howe v Kavanagh*; *Car Hire Group (Skyport) v Same* [1959] 2 Q.B. 311). A mini-cab "plies" for hire simply by standing still in a public place for a period (*Newman v Vincent and Welbeck Motors* [1962] 1 W.L.R. 1017; *Rose v Welbeck Motors* [1962] 1 W.L.R. 1010).

Where a cab proprietor was driving a licensed hackney carriage not large enough to carry the party of persons and he (gratuitously) drove them round to his stables to see his unlicensed waggonette which they engaged for hire, held, that there was no plying for hire with the waggonette, within Town Police Clauses Act 1847 (c.89) s.45 (*Cavill v Amos*, 64 J.P. 309). A stationary motor car was unattended outside a house advertising a taxi service. The owner's husband, who was in charge of the vehicle, was "plying for hire" (*Vant v Cripps*, 62 L.G.R. 88, DC). The driver of an unlicensed private hire vehicle parked adjacent to a hackney carriage stand, ostensibly to await further radio instructions from his employers, but who displayed a sign saying "Quick Cars", was "plying for hire" within the meaning of this section (*Pettigrew v Barry*, *The Times*, July 12, 1984).

Following *Clark v Stanford* (above), it is an offence under London Hackney Carriage Act 1853 (c.33) s.17(2) for a cabman to refuse to drive to a private place, e.g. a railway station, because there the words are "ANY place", which means any place where he can gain admittance (*Ex p. Kippins* [1897] 1 Q.B. 1). See also PLACE, para.(5)(a).

"Ply for hire" within a municipal by-law: see *Blackpool v Bennett*, *Blackpool v Kenyon*, 4 H. & N. 127; sub nom. *Bennett v Blackpool*, 28 L.J.M.C. 203.

"Used in standing or plying for hire": see *Hawkins v Edwards* [1901] 2 K.B. 169, cited HACKNEY CARRIAGE.

"Plying for hire means soliciting for custom without any previous contract": see per Avory J., *Sales v Lake* [1922] 1 K.B. 553. See also *Armstrong v Ogle* [1926] 2 K.B. 438; *Crack v Holt*, 43 T.L.R. 231; *Leonard v Western Services Ltd* [1927] 1 K.B. 702; *Greyhound Motors Ltd v Lambert* [1928] 1 K.B. 322; *Griffin v Grey Coaches Ltd*, 98 L.J.K.B. 209; *Att-Gen v Sharpe*, 45 T.L.R. 628. A cab driver is only plying for hire within s.35 of the London Hackney Carriage Act 1831 (c.22) if he is actually on a rank or is stationary in a street (*Hunt v Morgan* [1948] 2 All E.R. 1065). See also *Cocks v Mayner*, 70 L.T. 403, cited HIRE.

"Ply for . . . reward" (British Railways Board Byelaws 1965 byelaw 22(2)(c)). The driver of a hackney carriage, which is not authorised to ply for reward on the railway, can be guilty of doing so when he enters the station, even if hailed while outside it (*Khan v Evans* [1985] R.T.R. 33).

A driver of a marked mini-cab, whose vehicle was not a licensed hackney carriage, plied for hire within the meaning of the Town Police Clauses Act 1847 (c.89) if he was approached by a member of the public and then entered into negotiations for the hire of the vehicle (*Nottingham City Council v Woodings* [1994] R.T.R. 72).

PNEUMOCONIOSIS. Stat. Def., National Health Insurance (Industrial Injuries) Act 1946 (c.62) s.57(3); Social Security Act 1975 (c.14) Sch.20.

POACHER. To call a man a "poacher" is slander (*Cook v Spence*, 4 S.L.T. 295).

POACHING. See GAME, Animals; NIGHT; SEARCH.

POINT. A sailor's "point" is not a mathematical point at the end of a promontory; it is the whole of the promontory. "The point begins where a vessel having to go round it, either up or down the river, would, if there were nothing in the way, be obliged to use her steerage for the purpose of continuing her course, and that it ends where the necessity, if there were nothing in the way, of using the steerage in order to go round, ceases". "Rounding" a point "begins from the time when, if there were nothing in the way, a vessel would have to begin to use her steerage to go round, and that the rounding ends at the same place that I before stated, where, if there were nothing in the way, she would cease using her steerage for the purpose of going round, and would then be straight for her opposite course" (per Brett M.R., *The Margaret*, 9 P.D. 47).

"Points" on a railway: see CHARGE OR CONTROL.

POINT OF LAW. The question whether an official referee exercised his discretion correctly in dismissing an action for want of prosecution is a "point of law" within the meaning of R.S.C. Ord.58 r.5 (*Instrumatic v Supabrase* [1969] 1 W.L.R. 519).

Section 204 of the Housing Act 1996 conferred a right of appeal "on any point of law". The Court of Appeal concluded that "a point of law" includes not only matters of legal interpretation but also the full range of issues which would otherwise be the subject of an application to the High Court for judicial review, such as procedural error and questions of vires, irrationality and adequacy of reasons (*Nipa Begum v Tower Hamlets LBC* [2000] 1 W.L.R. 306, CA).

"18. Section 289(2) enables the Claimant to appeal against the Inspector's decision but only on a 'point of law'. Essentially that expression embraces established public law grounds of challenge (*Ashbridge v Minister of Housing and Local Government*

[1965] 1 WLR 1320, 1326).” (*Distinctive Properties (Ascot) Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 729 (Admin).)

See LAW; QUESTION. Cp. FACT.

POINT OF SUBSTANCE. As to what is “the point of substance” in a pleading within the old R.S.C. Ord.19 r.19, see *Thorp v Holdsworth*, 3 Ch. D. 637; *Collette v Goode*, 7 Ch. D. 842; *Byrd v Nunn*, 7 Ch. D. 284; *Tildesley v Harper*, 10 Ch. D. 393; *Green v Sevin*, 13 Ch. D. 589. Cp. *Rutter v Tregent*, 12 Ch. D. 758, and *Harris v Gamble*, 7 Ch. D. 877; with *Smith v Gamlen* [1881] W.N.110.

See SUBSTANCE; cp. “question” or “point” of law, QUESTION; LAW.

POISON. “With regard to the meaning of the term ‘poison’ (Offences Against the Person Act 1861 (c.100), s.58) there are certain things which have acquired the name of poisons; and as to these, possibly is a small quantity only were administered, the administration might come within the statute” (per Stephen J., *R. v Cramp*, 5 Q.B.D. 307). But in the same case Coleridge C.J., said, “A ‘poison’ is defined to be that which, when administered, is injurious to health or life”. And surely that must be the test. It is submitted that nothing is a poison, unless regard be had to its administration, e.g. strychnine is a deadly poison, or a valuable medicine, according to how and how much taken (see *Pharmaceutical Society v Delve*, below). A substance which makes a woman ill can be a “poison” within the meaning of ss.58 and 59 of this Act, even although there is no evidence that it was an abortifacient (*R. v Marlow*, 49 Cr.App.R. 49). See ADMINISTER; DRUG; MEDICINE; NOXIOUS.

To “administer” “poison or other destructive thing” (Offences Against the Person Act 1837 (c.85) s.2) would not include administering an innocent thing and thinking it poison; but it does include administering poison though accompanied with something which prevents its acting, e.g. administering to a child *cocculus indicus* berries entire in the pod, the pod being indissoluble in the child’s stomach (*R. v Cluderoy*, 19 L.J.M.C. 119).

As regards the Pharmacy Act 1868 (c.121), there were certain things which, by s.2 and Sch.A, were to be deemed poisons but s.2 also authorised the Pharmaceutical Society (by resolution, approved by the Privy Council) to declare any article a poison within the Act. See as to vermin killers, *Brown v Leggett* [1906] 1 K.B. 330.

A compound containing a specified ingredient in such quantity that the compound was, in its entirety, a poisonous thing, though only to a child, was a “poison” within the Acts (*Pharmaceutical Society v Piper* [1893] 1 Q.B. 686; *Pharmaceutical Society v Armson* [1894] 2 Q.B. 720). Thus, chlorodyne was a “poison” within Pharmacy Act 1868 (c.121) s.15, because it contained two grains of morphine to the fluid ounce; and it was not a patent “medicine” within s.16, for that latter phrase was only applicable to patent medicines strictly so called, i.e. those medicines for which Letter Patent had been granted (*Pharmaceutical Society v Piper*, above). So, Powell’s balsam of aniseed was a “poison”, though it contained only one-tenth of a grain of morphine to the fluid ounce (*Pharmaceutical Society v Armson*, above). But a preparation having but little more than a trace of morphine was not a “poison” within s.15 (*Pharmaceutical Society v Delve* [1894] 1 Q.B. 71). See further *Bremridge v Hume*, 33 S.L.R. 38, and *Bremridge v Turnbull*, 33 S.L.R. 40, cited CHEMIST. See SELLER.

Death by “poison”—e.g. in an exception in a life or accident policy—is none the less so because the poison is taken accidentally (*Cole v Accident Insurance*, 61 L.T. 227).

Damage by poisonous trees: see *Wilson v Newberry*, L.R. 7 Q.B. 31; *Crowhurst v Amersham Board*, 4 Ex. D. 5; and *Ponting v Noakes* [1894] 2 Q.B. 281, cited NUISANCE.

“Deleterious or poisonous”: see DELETERIOUS.

POISONOUS OR INJURIOUS DRUG OR SUBSTANCE. Stat. Def., Animal Welfare Act 2006 s.7(3).

POIZAGE. See PESAGE.

POLE. Poles are not buildings in a covenant against the erection of buildings (*National Trust v Midlands Electricity Board* [1952] 1 T.L.R. 74).

See ROD.

POLICE. Soldiers are not constables or police, even assuming that they happen to act as civilians (*R. v Glamorganshire CC* [1899] 2 Q.B. 536).

A police officer or constable when travelling not as a policeman but only as an Inspector of Weights and Measures, was not an officer or man “of a police force” who was travelling on an “occasion of the public service”, so as to be entitled to travel at a reduced fare under Cheap Trains Act 1883 (c.34) s.6 (*Spencer v Lancashire & Yorkshire Railway* [1898] 1 Q.B. 643).

The police authority is prima facie the watch committee: see *Swindon Corporation v Herbert* [1942] 1 K.B. 198.

“Police purpose” (Road Traffic Act 1934 (c.50) s.3): pursuing the car in front in order to ascertain its speed if done by a private person was not, in any sense, acting in pursuance of any police purpose (*Strathern v Gladstone* [1937] S.C. (J.) 11).

“Used for . . . police purposes” (Road Traffic Act 1960 (c.16) s.25, Road Traffic Regulation Act 1967 (c.76) s.79). A police officer travelling to court in order to give evidence transferred to a police car when his own broke down and exceeded the speed limit. The car was being “used for police purposes” within the meaning of the section (*Aitken v Yarwood* [1965] 1 Q.B. 327).

See CONSTABLE; METROPOLITAN; PROHIBITED; SPECIAL POLICE SERVICES.

POLICE AND CRIME COMMISSIONER. Stat. Def., Police Reform and Social Responsibility Act 2011 s.1.

POLICE AND CRIME PANEL. Stat. Def., Police Reform and Social Responsibility Act 2011 s.102.

POLICE AND CRIME PLAN. Stat. Def., Police Reform and Social Responsibility Act 2011 s.7.

POLICE AUTHORITY. Stat. Def., “means—(a) any police authority established under s.3 of the Police Act 1996 (c.16); or (b) the Metropolitan Police Authority” (s.5(5) of the Crime and Disorder Act 1998 (c.37), inserted by s.97 of the Police Reform Act 2002 (c.30)).

POLICE CUSTODY. “Deceased was in police custody” (Coroners Act 1988 (c.13) s.8(3)(b)). A prisoner who was serving his sentence at a police station because of prison overcrowding remained in “police custody” for the purposes of this section when, after becoming seriously ill, he was taken to hospital where he died (*R. v Coroner for Inner North London, Ex p. Linnaine* [1989] 1 W.L.R. 395).

POLICE FORCE. Stat. Def., Criminal Appeal Act 1995 (c.35) s.22(2)(a); Corporate Manslaughter and Corporate Homicide Act 2007 s.13(1).

Stat. Def., Crime and Courts Act 2013 s.16.

See UNITED KINGDOM POLICE FORCE.

POLICE

POLICE SERVICE. For the purpose of s.200(2) of the Employment Rights Act 1996, “police service” (defined as “service as a member of a constabulary maintained by virtue of an enactment or service in any other capacity by virtue of which a person has the powers or privileges of a constable”) did include service in the British Transport Police Force (*Spence v British Railways Board* [2001] I.C.R. 232, EAT).

POLICE STATION. “At a police station”: see AT.

POLICE SUPPORT OFFICER. Stat. Def., “a person who is employed by a police authority under section 15(1) of the Police Act 1996 (c.16) and who is under the direction and control of the chief officer of police of the police force maintained by that authority” (Drugs Act 2005 (c.17) s.19).

POLICIES FOR THE SUPPLY OF HOUSING. “51. The natural meaning of the words ‘policies for the supply of housing’ is policies which make provision for housing. There are many such policies in local plans. Paragraph 49 could have been worded so as to read ‘policies which may restrict housing development’ or ‘policies affecting housing development’ in which case it would have been broader in scope. The adjective ‘relevant’ is attached to the word ‘policies’, and means policies which are relevant to the site in question. It does not have the meaning suggested to me in court, namely, policies ‘relevant to the supply of housing’. That is an impermissible re-writing of the sentence.” (*Cheshire East Borough Council v Secretary of State for Communities and Local Government* [2015] EWHC 410 (Admin).)

POLICING BODY. Stat. Def., Crime and Courts Act 2013 s.16.

POLICY. A policy of insurance is an instrument of recoupment, or mitigation, of loss, effected between the insurer and insured, whereby the insurer agrees to pay money, or make good destruction or damages, or do some other thing, on the happening of some event or events. “It is not, like most contracts, signed by both parties, but only by the insurer, who on that account, it is supposed, is denominated an underwriter” (Park, 1).

The event against which a contract of insurance provides must: (1) be uncertain as to its happening at all, or as to the time of its happening—that idea is involved in the word “insurance”, for “a contract to pay a sum of money at the end of a fixed period of time, and nothing more, is certainly not a contract of insurance”; and (2) in the same way be adverse to the interest of the assured (per Channell J., *Prudential Assurance v Inland Revenue Commissioners* [1904] 2 K.B. 658). As to the distinction between a policy and a wager, see per Blackburn J. in *Wilson v Jones*, L.R. 2 Ex. 139, 150. See further *London County Commercial Reinsurance Office* [1922] 2 Ch. 67. See also INTEREST.

A policy of insurance is a contract uberrimae fidei: see INSURANCE.

“Policy of life assurance” (Building Societies Act 1962 (c.37) s.129(1)). See *National Mutual Life Association of Australasia v Federal Commissioner of Taxation*, 102 C.L.R. 29.

“Policy issued under the section” (Road Traffic Act 1930 (c.43) s.36(4)) did not include a policy obtained by misrepresentation or fraud (*Guardian Assurance Co v Sutherland*, 55 T.L.R. 576).

“Policy of life insurance” (Stamp Act 1891 (c.39) s.98) included an old age endowment with life insurance policy, whereby the assured became entitled to a stated sum on his attaining a stated age or his executors to a different sum if he died under that age (*Prudential Assurance v Inland Revenue Commissioners*, above).

As to the stamp duty on a settlement of a life policy, see *Northumberland v Inland Revenue Commissioners* [1911] 2 K.B. 343, cited SETTLEMENT.

There are two kinds of policies of marine insurance: (1) valued, i.e. when the policy, in terms, puts a value on the thing insured; and (2) open, i.e. when it does not mention the value, and therefore, in case of loss, the value has to be proved (Park 1, citing 2 Burr. 1171). See hereon *Bruce v Jones*, 32 L.J. Ex. 132; *Wilson v Nelson*, 33 L.J.Q.B. 220. See further *Balmoral SS Co v Marten* [1902] A.C. 511. The phrase now is, (1) valued, or (2) unvalued, on which see Marine Insurance Act 1906 (c.41) ss.27, 28, 29(4). See TIME POLICY.

Policy "as well in insurer's own names as for and in the name and names of all and every other person or persons": see *Boston Fruit Co v British & Foreign Marine Insurance* [1906] A.C. 336.

"Policy wholly or partially kept up for donee": see WHOLLY.

"Policy of insurance against accident": see ACCIDENT.

"Honour policy": see HONOUR.

"Port policy": see HARBOUR.

Stat. Def., Finance Act 1980 (c.48) s.30; Insurance Companies Act 1982 (c.50) s.96.

See SLIP; ORIGINAL POLICY; CONTINUING POLICY; PUBLIC POLICY.

POLICY HOLDER. (Policyholders Protection Act 1975 (c.75) s.8(2).) A person who was not the legal holder of a policy of insurance but who had a contingent claim under the policy on the insurance company's liquidation was not a "person to whom . . . a sum is due" within the meaning of s.96(1)(b) of the Insurance Companies Act 1982 (c.50) and was not therefore a "policyholder" entitled under s.8(2) of the 1975 Act to compensation from the Policyholders Protection Board (*Scher v Policyholders Protection Board (No.2)*; *Ackman v Same (No.2)* [1994] 2 All E.R. 37). A person was only a "policyholder" within the meaning of the Insurance Companies Act 1982 (c.50) s.96 if all the preconditions of liability to the insurance company have been satisfied (*Scher v Policyholders Protections Board* [1994] 2 All E.R. 37).

Stat. Def., Insurance Companies Act 1982 (c.50) s.96.

POLITICAL. To constitute an offence as one of a "political character" (Extradition Act 1870 (c.52) s.3), there must be at least two distinct political parties, each striving to impose its form of government on the country of those in conflict. "The offences of anarchists consist, in the main, of attacks on private citizens generally rather than on governments, or members of any particular government, as such. In such cases they cannot be called 'political' offences" (per Cave J., *Re Meunier* [1894] 2 Q.B. 415). See further *Re Arton* [1896] 1 Q.B. 108.

An offence directed against the government of a country other than the one seeking extradition was held not to be of a "political character" for the purposes of the Extradition Act 1870 (c.52) s.3 (*Cheng v Governor of Pentonville Prison* [1973] A.C. 931). An offence might be "of a political character" within the meaning of this section (or s.2(2)(a) of the Backing of Warrants (Republic of Ireland) Act 1965 (c.45)) if it had some direct motive of a political kind, or where the state applying for extradition was anxious to deal with the accused more for his politics than for the offence charged (*R. v Governor of Winson Green Prison, Ex p. Littlejohn* [1975] 1 W.L.R. 893).

That being premised, a crime of a "political character" can best be explained by examples. "For instance, if a civil war were to take place, it would be high treason by levying war against the queen. Every case in which a man was shot in action would be murder. Whenever a house was burnt for military purposes, arson would be

committed. To take cattle by requisition would be robbery. According to the common uses of language, however, all such acts would be political offences, because they would be incidents in carrying on civil war. I think, therefore, that the expression in the Extradition Act ought to be interpreted to mean that fugitive criminals are not to be surrendered for extradition crimes if those crimes were incidental to, and formed a part of, the political disturbances" (2 Stephen's History of the Criminal Law of England, 70). "I adopt that language as the definition that I think is the most perfect to be found, or capable of being given, as to what is the meaning of the phrase [offence of a 'political character'] which is made use of in the Extradition Act" (per Hawkins J., *Ex p. Castioni* [1891] 1 Q.B. 149). A person who was on trial for forgery in India was extradited, as the offence was not a political one, even though he had been branded as a political spy (*R. v Governor of Brixton Prison, Ex p. Mubarak Ali Ahmed* [1952] 1 T.L.R. 964).

The words "offence of a political character" must always be considered according to the circumstances existing at the time of consideration (*R. v Governor of Brixton Prison, Ex p. Kolczynski* [1955] 1 Q.B. 540).

"In my opinion the idea that lies behind the phrase 'An offence of a political character' is that the fugitive is at odds with the State that applies for his extradition on some issue connected with the political control or government of the country. The analogy of 'political' in this context is with 'political' in such phrases as 'political refugee', 'political asylum' or 'political prisoner'. It does indicate, I think, that the requesting State is after him for reasons other than the enforcement of the criminal law in its ordinary, what I may call its common or international, aspect" (*Schtraks v Government of Israel* [1964] A.C. 556 per Viscount Radcliffe).

An official prosecution in West Germany of former Nazi concentration camp officials in respect of their participation in the killing of inmates is not a criminal matter of a "political character" within the meaning of s.24 of the 1870 Act (*Re Extradition Act 1870, Ex p. Treasury Solicitor* [1969] 1 W.L.R. 12).

In construing an exception in a charterparty of "political disturbances or impediments", the rule in *Hudson v Ede*, L.R. 3 Q.B. 415 (cited DETENTION BY ICE) is applicable (*Smith v Rosario Nitrate Co* [1893] 2 Q.B. 323).

Where the main object of a society is to alter the law by prohibiting vivisection altogether, that object is political and not charitable (*National Anti-Vivisection Society v Inland Revenue Commissioners* [1947] L.J.R. 1112).

The promotion of the observance of human rights by campaigning to change the laws or policies of a government was a "political object" within the meaning of s.92(2) (*R. v Radio Authority, Ex p. Bull* [1997] 3 W.L.R. 1094).

(United Nations Convention Relating to the Status of Refugees (1951).) A crime committed with the object of overthrowing or changing the government of a state or inducing it to change its policy is to be regarded as a "political crime" provided the commission of the crime is not too remote from its objective (*R. v Governor of Pentonville Prison, Ex p. Cheng* [1973] A.C. 931 applied) (*T. v Secretary of State for the Home Department* [1995] Imm.A.R. 142).

(European Convention on Mutual Assistance in Criminal Matters 1959.) Making payments by way of bribes or illicit donations to politicians or political parties with a view to bringing about a change in government policy were not "political offences"

within the meaning of art.2 of the European Convention on Mutual Assistance in Criminal Matters 1959 (*R. v Secretary of State for the Home Department, Ex p. Finninvest SpA* [1997] 1 W.L.R. 743).

“Political party”: Stat. Def., Finance Act 1975 (c.7) Sch.6 para.11.

See EXTRADITION.

POLITICAL DONATION. Stat. Def., Companies Act 2006 s.364.

POLITICAL EXPENDITURE. Stat. Def., Companies Act 2006 s.365.

POLITICAL EXPRESSION. “The protection goes to ‘political expression’; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views (*Calver* at [79]), but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others (*Thorgeirson* at [64]: see also *Calver* at [64] and the academic references referred to therein). The cases are careful not unduly to restrict the concept; although gratuitous personal comments do not fall within it.” (*Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin).)

POLITICAL HOSTILITY. See RELIGIOUS OR POLITICAL HOSTILITY.

POLITICS. According to its true original meaning “politics” “comprehends everything that concerns the government of the country, of which the administration of justice makes a considerable part” (per Hardwicke C., *Chesterfield v Janssen*, 2 Ves. Sen. 156).

POLL. A deed poll is a deed the paper or parchment on which it is written being polled or even at the top, and is unipartite, binding only the party making it (*Plowd.* 134, 421); an indenture is a deed which formerly was (but is not now, Real Property Act 1845 (c.106) s.5) required to be indented at the top, and is generally inter partes, and then its language is, speaking generally, that of all its parties; see further DEED.

See *R. v Dover*, 72 L.J.K.B. 210, cited DEMAND; see also VOTE.

POLLOCK’S ACT. Limitations of Actions and Costs Act 1842 (c.97).

POLLUTANT. Stat. Def., see Air Quality Standards Regulations 2007 (No.64) reg.2.

POLLUTING. Stat. Def., Rivers Pollution Prevention Act 1876 (c.75) s.20.

Cp. FILTHY WATER; SOLID MATTER.

POLLUTION. In order to be regarded as pollution, a substance need not be poisonous or noxious (*Express Ltd v Environment Agency* [2004] EWHC 1710 (Admin)).

POLLUTION DAMAGE. See *Carribean Petroleum Corporation v Cristal Ltd (The Morris I Berman)* [2004] 1 Lloyd’s Rep. 48, Q.B.D.

POLLUTION OF THE ENVIRONMENT. Stat. Def., Environmental Protection Act 1990 (c.43) s.1.

“Marine pollution”: see MARINE POLLUTION.

POLYGAMY. “Polygamous marriage” (Matrimonial Causes Act 1973 (c.18) s.11(d)). A marriage contracted abroad in a country where the local law permitted polygamy could only be potentially polygamous, and hence void under this section if at least one of the spouses had the capacity to marry a second spouse during the subsistence of the first marriage (*Hussain v Hussain* [1982] 3 All E.R. 369).

POND

POND. “A pond is a standing ditch cast by labour of man’s hand in his private grounds for his private use to serve his house and household with necessary waters; but a POOL is a low plat of ground by nature, and is not cast by man’s hand” (Callis, 82).

PONTAGE. Is sometimes a charge for repairing a bridge, and sometimes a toll for using a bridge (Termes de la Ley).

PONY. Stat. Def., Ponies Act 1969 (c.28) s.1(c); Animal Health Act 1981 (c.22) s.89.

POOL. “*Stagnum*, in English a poole, doth consist of water and land; and therefore by the name of *stagnum*, or a poole, the water and land shall passe also” (Co. Litt. 5A, B; cp. WATERS). “A pool is a mere standing water without any current at all, and hath seldom or never any issue to convey away the waters; but a ditch hath no constant standing nor any apparent current” (Callis, 82). Cp. POND. See GURGES; LAND COVERED WITH WATER.

A Stock Exchange “pool” is an arrangement between two or more persons for selling or buying some particular class of stock, shares, or securities, and apportioning the result among themselves with the view (generally) to “make a price” in the thing dealt in. Such an arrangement is not illegal, or ultra vires a board of directors (*Sanderson v British Westralian Corporation*, 43 S.J. 45).

Pooling receipts by railway companies (*London, Chatham & Dover Railway v South Eastern Railway* [1893] A.C. 429, cited CERTAIN TIME).

POOL BETTING. Football pool betting operations were held to be “competitions for which prizes are offered” within the Betting and Lotteries Act 1934 (c.58) s.26 (*Elderton v UK Totalisator Co* [1946] Ch. 57). See also *Zeidman v Owens* [1950] 1 K.B. 593.

A weekly sweepstake on goals scored by football teams involves no element of forecasting and is not, therefore, pool betting (*Customs and Excise Commissioners v Dodd* [1961] 1 W.L.R. 144).

Stat. Def., Betting and Gaming Duties Act 1981 (c.63) s.10; Gambling Act 2005 (c.19) s.12.

POOR. A trust for the benefit of “the poor” of a locality did not, as a general rule, include those who were receiving parochial relief (*Att-Gen v Exeter Corp*, 6 L.J.O.S. Ch. 50; *Att-Gen v Clarke*, 1 Amb. 422; *Att-Gen v Wilkinson*, 1 Bea. 370; *Att-Gen v Gutch*, Reg. Lib. A., 1830, fo. 2720; 1 Jarm. (8th edn), 229; Lewin (15th edn), 463; see judgment in *St. Nicholas, Deptford v Sketchley*, 17 L.J.M.C. 22, 23; but see RELIEF). A charity for the benefit of “poor boys” was held not confined to those poor boys who required parish relief or to the boys of persons requiring such relief (*Canterbury Guardians v Canterbury Corp*, 31 L.J. Ch. 810); “indeed, poverty alone is an insufficient qualification” when the charity is for EDUCATION (per Romilly M.R., *Re Latymer*, L.R. 7 Eq. 353). See further *Mary Clark Home v Anderson* [1904] 2 K.B. 645, cited ALMSHOUSE; *Re Clarke* [1923] 2 Ch. 407.

A gift for “the poor and needful” of a district was for the necessitous, whether in receipt of, or entitled to, parochial relief or otherwise (*Paterson’s Trustees v Christie*, 36 S.L.R. 384). See also *West v Knight*, 1 Ch. Ca. 134, cited PARISH.

A gift of personality to provide cheap dwellings for the “poor” was a good charity; and so far as it involved the acquisition of land, that might be struck out, under Mortmain and Charitable Uses Act 1891 (c.73) s.7, without putting an end to the trust (*Re Sutton* [1901] 2 Ch. 640, cited CHARITABLE USE); in such a connection “‘poor’

need not, necessarily, be poor of the class known as the WORKING CLASS, and many of the working class, as we know, are not poor" (per Buckley J., *Re Sutton*).

In an old case, a gift "to the poor", without more, was held to mean poor refugees, because the testator was a French refugee (*Att-Gen v Rance* (1728), cited *Att-Gen v Clarke*, 1 Amb. 422).

A gift for "the poor" of a regiment is a good charity: see *Re Donald* [1909] 2 Ch. 410, cited PUBLIC CHARITY.

"Poor people", for the purposes of a legal charity, is not necessarily confined to the destitute poor, but may extend to comprise persons of moderate means: see *Re Clarke* [1923] 2 Ch. 407.

A trust of impure personalty, "to give it to the poor as the trustees may think fit", is against the statutes of mortmain (*Re Clark, Husband v Martin*, 54 L.J. Ch. 1080).

Sometimes "poor" is used as a term of endearment (*Anon*, 1 P. Wms. 327; see thereon 3 Jarm. (9th edn), 1627, 1628).

"Aged, impotent and poor": see CHARITY.

Stat. Def., Poor Law Amendment Act 1834 (c.76) s.109; Poor Law Act 1930 (c.17) s.163.

See POOREST; RELATIONS; SICK.

POOR LAW. Stat. Def., Poor Law Amendment Act 1834 (c.76) s.109.

The poor law was superseded in 1948 by the National Assistance Act 1948 (c.29) s.1.

POOR RATE. "Poor rate" (Poor Law Amendment Act 1834 (c.76) s.109). See *Northampton v Ellen* [1904] 1 K.B. 299, cited NOT EXCEEDING; *Islington v London School Board* [1902] 2 K.B. 701, and *Farmer v London & North Western Railway*, 20 Q.B.D. 788, cited WORKS. See Poor Law Act 1930 (c.17).

An exemption from the poor rate is still operative even though the poor rate is now merged in the general rate (*Wiltshire County Valuation Committee v Boyce* [1948] 2 K.B. 125).

POOREST. In order that a gift "for the relief and use of the poorest of my kindred" may be good as a charitable bequest, the word "poorest" must mean "poor" or "very poor", and not "the least wealthy of a number of wealthy persons" (*Att-Gen v Northumberland*, 7 Ch. D. 745, disapproving dictum of Wickens V.C., *Gillam v Taylor*, L.R. 16 Eq. 581). See further Tudor, Char. Trusts.

See POOR; RELATIONS.

POPPY-STRAW. Stat. Def., Dangerous Drugs Act 1965 (c.15) s.24; Misuse of Drugs Act 1971 (c.38) Sch.2 Pt IV.

POPULAR ACTION. "Actions popular are those given on the breach of some penal statute, which every man hath a right to sue for himself and the King. And because this action is not given to one especially, but generally to any that will prosecute, it is called action popular; and from words used in the process (*qui tam pro domino rege sequitur quam pro se ipso*) it is called a Qui Tam action" (Jacob, Action). See further Termes de la Ley, Action Popular; 3 Bl. Com. 160.

See PROMOTER.

POPULOUS. For the purpose of the English Licensing Acts, "'populous place' means any area with a population of not less than 1000 which, by reason of the density of such population, the county licensing committee may, by order, determine to be a populous place" (Licensing (Consolidation) Act 1910 (c.24) Sch.6 para.2).

For the purpose of the Working Classes Dwellings Act 1890 (c.16), “‘populous place’ means the Administrative County of London, any municipal BOROUGH, any URBAN sanitary district, and any other place having a dense population or an urban character” (s.1).

PORCA TERRÆ. “By the name of *selio* or *porca terræ*, doth pass a ridge of land, which is sometimes longer, and sometimes shorter” (Touch. 95). See SELION.

PORCARIA. “Fleta maketh mention of *porcaria*, a swinestye” (Co. Litt. 5B).

PORK BUTCHER. See BUTCHER.

PORNOGRAPHY. “According to the New Shorter Oxford English Dictionary (1993) vol.2 ‘pornography’ means: ‘The explicit description or exhibition of sexual subjects or activity in literature, painting, films, etc., in a manner intended to stimulate erotic rather than aesthetic feelings; literature etc. containing this.’ This is a useful guide. I would observe, however, that erotic and aesthetic feelings are not mutually exclusive. Some forms of pornography may contain an aesthetic element. Where, however, the aesthetic element is predominant, the image will not constitute pornography. With this qualification, the dictionary definition above fairly represents the primary meaning of ‘pornography’. ‘Child pornography’ bears a corresponding meaning where the sexual activity described or exhibited involves children.” (*De Reuck v Director of Public Prosecutions (Witwatersrand Local Division)* (CCT5/03), Constitutional Court, South Africa (judgment October 15, 2003).)

Stat. Def., Sexual Offences Act 2003 (c.42) s.51.

PORT. “A port is a place, for the lading and unlading of ships or vessels, erected by Charter of the King or a lawful prescription” (per Lord Chelmsford, *Foreman v Free Fishers of Whitstable*, L.R. 4 H.L. 266).

“A port is a haven and somewhat more—

“1. It is a place for arriving and unlading of ships or vessels;

“2. It hath a superinduction of a civil signature upon it, somewhat of franchise and privilege;

“3. It hath a ville or city or borough, that is the *capus portus* for the receipt of mariners and merchants, and the securing and vending of their goods, and victualling their ships.

“So that a port is *quid aggregatum*, consisting of somewhat that is natural—viz. an access of the sea whereby ships may conveniently come; safe situation against winds where they may safely lye; and a good shore where they may well unlade; something that is artificial—as keys and wharfs, and cranes and warehouses, and houses of common receipt; and something that is civil—viz. privileges and franchises *jus applicandi*, *jus mercati*, and divers other additaments given to it by civil authority” (HALE, *De Portibus Maris*, Ch. 2, cited by Lord Chelmsford, *Foreman v Free Fishers of Whitstable*, above). Cp. CREEK.

“The franchise of a port may be in one person and the ownership of the soil, within the limits of the port, in another” (per Lord Chelmsford, *Foreman’s Case*, above, citing *De Portibus Maris*). See further 10 Encyc. 215–220; cp. HARBOUR.

The word “port”, in a charterparty or marine policy, is to be understood in its popular, or business, or commercial, sense; it does not in such a document necessarily mean port as defined for revenue or pilotage purposes (*Sailing-Ship “Garston” Co v Hickie*, 15 Q.B.D. 580; in which case tests for determining the business meaning of “port” were considered); e.g. “port or ports” may be construed “place or places”, and so comprise an open roadstead (*Cockey v Atkinson*, 2 B. & Ald. 460). See further *Price*

v Livingstone, 9 Q.B.D. 679; per Martin B., *General Steam Navigation Co v British & Colonial Steam Navigation Co*, L.R. 3 Ex. 330, cited NAVIGATING WITHIN; *Caffin v Aldridge* [1895] 2 Q.B. 366, 648; *Sea Insurance v Gavin*, 4 Bligh, N.S. 578; *Hull Dock Co v Browne*, 2 B. & Ad. 43. See *S.S. Leonis v Rank* [1908] 1 K.B. 499, cited ARRIVE.

"The port of Buenos Aires" has been held to mean the commercial part of the port where a ship can be loaded when a berth is available, and to exclude Buenos Aires Roads (*Sociedad Financiera de Bienes Raices v Agrimpex Hungarian Trading Co, The Aello* [1961] A.C. 135).

Insurance on a ship "at and from her port of lading in North America to Liverpool". She took in part of her cargo at K, in New Brunswick, and sailed thence to B, in the same province, seven miles distant on the same bay of the sea. She there completed her cargo, and then returned to K to receive provisions, etc. after which she sailed for England, and was lost on the voyage. B was not in the way from K to Liverpool, B and K were situated on creeks opening in the bay, and were spoken of by some persons as ports, but neither of them had a custom-house. They had custom-house officers and were under the jurisdiction of the custom-house of St. John, New Brunswick; held, that after the ship had begun to load at K, that was her port of lading; that the term "port of lading" in the policy did not allow of her afterwards going to B, and that her doing so was a deviation (*Brown v Tayleur*, 5 L.J.K.B. 57). "There must be a nonsuit in this case, unless we are prepared to say that 'port' is equivalent to 'ports' or 'port or ports'. But I think we are not at liberty here to construe the word with reference to custom-house regulations, but must consider it as merely indicating a place" (per Coleridge J., *Brown*, 5 L.J.K.B. 60). See further *Harrower v Hutchinson*, L.R. 5 Q.B. 584.

So, as regards statutes, "port" has been defined in its popular, rather than its legal, sense (*Barrett v Stockton & Darlington Railway*, 2 M. & G. 134; *Hull Dock Co v Browne*, 2 B. & Ad. 43); but in a case which, like the last, related to Hull Dock, "port" (Harbours Act 1814 (c.159) s.14) was held to mean the port as constituted for the time being by the order of the Commissioners of the Treasury (*Nicholson v Williams*, L.R. 6 Q.B. 632).

Port in the Sixth Hague Convention of 1907 has the ordinary commercial meaning of a place where ships go to load or unload, embark or disembark, and does not mean the port as defined for customs purposes (see *The Möwe* [1915] P. 1); or an open roadstead where no cargoes are ever loaded or discharged although within the limits of a fiscal port (see *The Belgia* [1916] 2 A.C. 183).

In prize law, oil conducted into tanks 150 yards from the wharf at which the ship carrying it was moored, by means of pipes, and there detained, is seized in "port" (see *The Roumanian* [1916] 1 A.C. 124); and so are goods sent by an enemy to this country to his own order and seized in a bonded warehouse (see *The Eden Hall* [1916] P. 78).

"Port of discharge" includes the whole port within which any portion of the cargo is usually, according to the custom of such port, taken out of the vessel" (*Whitwell v Harrison*, 2 Ex. 127, and cases there cited). See further *Attwood v Case*, 1 Q.B.D. 134; 8 Encyc. 179.

In the warranty of freedom from seizure in port of discharge, "the word 'port' is not to be taken in its narrow or strict legal sense, but rather as meaning the place of discharge agreed upon by the assured and underwriters" (1 MAUDE & P. 507; and cases there cited).

PORT

“Port of discharge”, in marine policies, is in common use where it is intended to limit the risk to such port; and where the policy says to “any port or place”, without more, it covers ports of loading as well as ports of discharge (*The Aikshaw*, 9 T.L.R. 605; *Crocker v Sturge* [1897] 1 Q.B. 330).

“Port of lading” or “loading”: “There is no technical meaning to be attached to the words ‘Port of lading’” (per Denman C.J., *Brown v Tayleur*, 4 A. & E. 247). See hereon LOAD.

“Last port”: see *Price v Livingstone*, 9 Q.B.D. 679.

“Regular port turn”: see *The Quilpué v Brown* [1904] 2 K.B. 270, cited TURN.

“Ports where there are bars”, in a charterparty: see *SS Magnhild v McIntyre Bros & Co* [1921] 2 K.B. 97.

“Safe port”, in a charterparty: see *Dollar & Co v Blood, Holman & Co*, 36 T.L.R. 843. See SAFE PORT.

“Usual port”, in a charterparty, means a substantial port in common use and would not include a small and comparatively unknown port: see *Dollar & Co v Blood, Holman & Co*, above.

“Making use of any port in the district”, as regards Pilotage Act 1913 (c.31) s.11: see *Connell v Lowther, Latta & Co* [1914] 3 K.B. 1135.

One of Lloyd’s signalling stations within a compulsory pilotage district, although a “place” is not a “port” within the meaning of s.11 of the Pilotage Act 1913 (c.31), and s.742 of the Merchant Shipping Act 1894 (c.60): see *Humber Conservancy Board v Federated Coal & Shipping Co Ltd* [1928] 1 K.B. 492.

“Port transport work” (Dock Workers (Regulation of Employment) (Amendment) Order 1967 (No.1252) Sch.2). Waterside manufacturers who handled only their own goods were not engaged in “port transport work” (*Bowaters United Kingdom Paper Co v National Dock Labour Board* [1971] 10 K.I.R. 1).

“Now in the port of A”: see NOW.

“Any port”: see LIBERTY TO CALL.

“Port of call”: see CALL.

Stat. Def., Harbours Act 1964 (c.40) s.57; Immigration Act 1971 (c.77) s.33(1); Merchant Shipping Act 1974 (c.43) s.10 Sch.4; Dock Work Regulation Act 1976 (c.79) s.6; Supreme Court Act 1981 (c.54) s.22; County Courts Act 1984 (c.28) s.30.

“Port of registry”: Stat. Def., Merchant Shipping Act 1894 (c.60) s.13.

See BRITISH PORT; CINQUE PORTS; FINAL PORT; HARBOUR; IN PORT; PORT OR PLACE; SAFE PORT; HOME PORT; LIMIT.

PORT CHARGES. “Port charges”, “in their ordinary sense, mean such charges as a ship would have to pay before she leaves port”, including light dues (per Mathew J., *Newman v Lamport* [1896] 1 Q.B. 20).

“Port charges, pilotages, and other expenses, at the port”, in a charterparty, do not include coals supplied at a port into which a steamer has been obliged to put in consequence of the breakdown of her machinery (*The Durham City*, 14 P.D. 85).

Stat. Def., Transport Act 1962 (c.46) s.50(3).

PORT WINE. See Anglo-Portuguese Commercial Treaty Act 1916 (c.1) s.1.

PORT OR PLACE. See *Hull Dock Co v Priestley*, 4 B. & Ad. 178; cp. *Tennant v Swansea Harbour Trustees*, 3 T.L.R. 128. See PORT.

Policy on a ship “to any port or place in any order”: see *Crocker v Sturge* [1897] 1 Q.B. 330, cited PORT; *Spalding v Crocker*, 2 Com. Cas. 189; *Crocker v General Insurance of Trieste*, 3 Com. Cas. 22; cp. LIBERTY TO CALL.

See PLACE.

PORTEUS' (BISHOP) ACT. The Sunday Observance Act 1780 (c.49). See hereon ENTERTAINMENT.

PORTER. A porter at the entrance of a block of flats is a door-keeper or janitor, and he does not provide attendance by carrying things for tenants unless provision is made in the lease (*Palser v Grinling* [1948] A.C. 291).

For definition of "house porter", see *Marchant v London County Council* [1910] 2 K.B. 379.

See BEER; MERCHANT.

PORTFOLIO HOLDINGS. "The issues on this appeal all relate to what have been called 'portfolio holdings'; that is to say dividends paid on shares in foreign companies held as investments, where the investor holds less than 10 per cent of the voting power in the company in question." (*The Prudential Assurance Company Ltd v HM Revenue and Customs* [2016] EWCA Civ 376.)

PORTION. Probably, in its most frequent use, a "portion" may be defined as an undefined share in a fund to which a member of a class, e.g. children or younger children, is or may become entitled under a settlement or will; and generally the right thereto arises by the exercise of a power of appointment: see hereon Lewin (15th edn), 112; *O'Hanlon v Unthank*, I.R. 7 Eq. 68.

"Portion" is synonymous with SHARE; and a bequest of a legatee's "portion" will not, without an auxiliary context, pass an accrued share (3 Jarm. (8th edn), 1977).

"The word 'portion' is ambiguous. It may only mean—and it frequently means—a part of some larger amount; and it may also mean the 'portion' as used in the sense in which a person speaks of providing for his children" (per Pollock C.B., *Butt v Thomas*, 11 Ex. 243, 244).

"Any portion": see *Liddy v Kennedy*, L.R. 5 H.L. 134, cited ANY.

"The rule against double portions is generally stated to apply to a parent, or person *in loco parentis*" (per Stirling J., *Re Ashton* [1897] 2 Ch. 574, cited LOCO PARENTIS). The rule against double portions only applied as between children; i.e. against one child in favour of other children, not in favour of a stranger (per James L.J., *Fowkes v Pascoe*, 10 Ch. 351, stating effect of *Meinertzhagen v Walters*, 7 Ch. 670, applied *Re Heather* [1906] 2 Ch. 230, which latter case shows that whether a gift is a portion or not depends on the circumstances). See further as to the rule, *Re Blundell* [1906] 2 Ch. 222, and cases there cited; *Re Peel*, 55 S.J. 580; *Lenehan v Wall* [1922] 1 I.R. 59; *Re George's Will Trusts* [1948] 2 All E.R. 1004. As to rebutting the presumption against double portions, see *Re Lacon* [1891] 2 Ch. 482. *Re Lacon* was followed in *Re Scott* [1903] 1 Ch. 1, which latter case preferred the view of Jessel M.R. in *Taylor v Taylor*, L.R. 20 Eq. 155, to that of Wood V.C. in *Boyd v Boyd*, L.R. 4 Eq. 305, and of Pearson J. in *Re Blockley*, 29 Ch. D. 250; and a like course was taken by Warrington J. in *Re Crozier*, 50 S.J. 206. See further *Re Jaques* [1903] 1 Ch. 267, cited ADVANCEMENT; *Re Binns* [1929] 1 Ch. 677. See hereon 10 Encyc. 221–225.

As to maintenance of children in respect of portions to which they are contingently entitled, see *Re Greaves* [1900] 2 Ch. 683.

Mortgage of the whole estate for some of the portions does not obtain priority over the other portions not yet raisable (*Nightingale v Reynolds* [1903] 2 Ch. 236).

PORTIONIBUS

“Provision for raising a portion”, as regards Accumulations Act 1800 (c.98) s.2, held not to include a trust established by a testator for accumulation after the death of his widow: see *Re Elliott* [1918] 2 Ch. 150. See now Law of Property Act 1925 (c.20) s.164.

“Portion only” of his time: see *Schulze v Steele*, 27 S.L.R. 636, cited MALE SERVANT.

“Portion of the district” (Land Drainage Act 1930 (c.44) s.24(7)) must include part of the surface area. A wholly subterranean hereditament cannot be exempted (*R. v Trent River Authority, Ex p. National Coal Board* [1971] A.C. 145).

See PARCEL.

PORTIONIBUS. This word is properly employed to mean a portion of the tithes of one parish claimed by the rector of another parish (*Scarlet v Lucton School*, 4 Cl. & F. 1).

PORTRAIT. A portrait is the pictorial presentment, taken from life or from “reasonable materials from which a likeness may be framed”, of a person (or it may be of more than one person), the chief object of the picture being the preservation of a life-like resemblance of the countenance; and it is not less a “portrait” because accompanied by subordinate accessories more or less of an ideal character (*Leeds v Amherst*, 14 L.J. Ch. 73, in which case the word, and even its derivation, are treated with a wealth of learning and illustration not a little unusual in a case on which the L.C. said, “nothing but Mr Bethell’s talent and ingenuity could have thrown any doubt”). In that case Lord Lyndhurst in the course of his judgment said, “I may be permitted to say this, that if a picture is painted after a man’s death, and meant to represent him, if there is nothing affording the materials for the portrait, it is completely an ideal picture, and cannot properly be called a portrait; but if there are reasonable materials from which a likeness may be framed, I do not consider it less a portrait, though painted after the death of an individual, than if painted during his lifetime” (14 L.J. Ch. 81). See further *Re Layard*, 85 L.J. Ch. 505.

A likeness of a deceased person drawn by a psychic artist is a portrait within s.5(1)(a) of the Copyright Act 1911 (c.46) (*Leah v Two Worlds Publishing Co* [1951] Ch. 393).

Would a likeness of an animal—e.g. a horse—come within the meaning of “portrait”? See observations of Shadwell V.C. in *Leeds v Amherst*, 14 L.J. Ch. 75.

A contract to paint a portrait is a contract for work and labour, not for sale of goods (*Robinson v Graves* [1935] 1 K.B. 579).

See PHOTOGRAPH; DISTINCTIVE.

POSITION. Of celebrant and minister at Holy Communion: see *Elphinstone v Purchas*, L.R. 3 A. & E. 66, and *Ridsdale v Clifton*, 2 P.D. 276, cited ORNAMENT.

A county council “shall be constituted and elected, and conduct their proceedings, in like manner and be in the like position in all respects as the council of a borough divided into wards” (s.2 of the Local Government Act 1888 (c.41)): “I read that section as a mere machinery section dealing with the constitution, election, and conduct of proceedings; and not as a section making a radical alteration in the origin and incorporation of a county council, changing it, in effect, from a corporation incorporated by a statute (for the particular purposes mentioned in the statute) to a corporation created by charter outside the statute altogether” (per Williams L.J., *Att-Gen v London CC* [1901] 1 Ch. 781; approved by Halsbury C., *London CC v Att-Gen* [1902] A.C. 168); as regards its powers, the county council was in a different

“position” from the council of a borough created by charter, and could not exercise the common law powers of a charter corporation (*Att-Gen v London CC*, see especially judgment of Rigby L.J.); therefore, though the London CC might have statutory powers to run tramways, that did not authorise it to run a service of omnibuses as feeders to its tramways, such service not being incidental to the business of the tramways (*London CC v Att-Gen* [1902] A.C. 165). See further *Ashbury Co v Riche*, L.R. 7 H.L. 653, and succeeding cases, cited CORPORATION. Cp. *Att-Gen v Manchester* [1906] 1 Ch. 643, cited CONVEY; *Deuchar v Gas, etc. Co* [1925] A.C. 691.

“When in a position to do so”: see *Lusher v Hassard*, 20 T.L.R. 563, cited INTENTION.

“Position or place in a street” (London County Council (General Powers) Act 1947 (c. xiv) s.19) refers to a place where a perambulating street trader might stop, as opposed to a fixed pitch (*Levine v Tadman*, 69 L.G.R. 155).

“Position of plaintiff” (R.S.C. Ord.23 r.1(1)): see PLAINTIFF.

“Position” (in relation to an employee): Stat. Def., Employment Protection (Consolidation) Act 1978 (c.44) s.153.

POSITION OF TRUST. Stat. Def., Sexual Offences Act 2003 (c.42) ss.21 and 22.

POSITIVE. See “clear and positive proof”: see CLEAR.

POSSE. For keeping the peace and pursuing felons (see HUE AND CRY) the sheriff “may command all the people of his county to attend him; which is called the *posse comitatus*, or power of the county” (1 BL. COM. 343), which “in the opinion of Lambert in his *Eirenarcha*, 1. 3, c.1, fo. 309, containeth the ayd and attendance of all knights, gentlemen, yeomen, laborers, servants, apprentices, and all others above the age of 15 years, within the county; but women, ecclesiastical persons, and such as be decrepite, or labor of an infirmity, shall not be compelled to attend” (Cowel, *Power of the County*).

See IN POSSE.

POSSESSION. “The expression ‘possession and control’ indicates that the individuals concerned needed to have had ‘actual control of the goods’ (or possession of them), the test applied by the Court of Appeal in *R v Kousar* [2009] EWCA Crim 139; [2009] 2 Cr.App.R. 5. Although that case concerned ‘possession, custody or control’ of an item by a principal for the purposes of the Trade Marks Act 1994 in the context of a marriage, it is to be noted that the Court of Appeal expressly disavowed the suggestion that an ‘ability to control’ was sufficient to establish liability, certainly in the context of that case.” (*Montague, R. v* [2013] EWCA Crim 1781.)

“49. It was common ground that concluded contracts could be a possession for the purposes of A1P1. The most authoritative guidance on that topic is the decision of the Court of Appeal in *Murungaru v Secretary of State for the Home Department* [2008] EWCA Civ. 1015. There, the Court of Appeal dismissed the claimant’s claim that his contract with a private health provider for medical treatment in England was a possession protected by A1P1. In the judgment of Lewison J (as he then was) the court made plain that, in certain circumstances, contractual rights could amount to possessions under A1P1. He said:

‘48. The Strasbourg jurisprudence establishes that the mere fact that rights are contractual does not disqualify them from counting as property or possessions . . . But the converse: viz. that all contractual rights are property or possessions, does not follow. Mr Rabinder Singh QC accepted that the logic of his argument entailed that conclusion.

49. As Mr Rabinder Singh QC pointed out, a claim may count as a possession even though no court has yet adjudicated on its validity. But a claim justiciable in domestic law can amount to a possession for the purposes of A1P1 only if it is sufficiently established to be enforceable. By contrast, a claim may amount to an assignable chose in action in domestic law, even if it is not established. Indeed it may be a speculative claim, but it would still be classified, domestically, as a chose in action. In my judgment this demonstrates that there is no necessary coincidence between the autonomous Convention concept of property or possessions and the domestic concept of property . . .

58. In the present case, Dr Murungaru's contractual rights have none of the indicia of possessions. They are intangible; they are not assignable; they are not even transmissible; they are not realisable and they have no present economic value. They cannot realistically be described as an "asset". That is the touchstone of whether something counts as a possession for the purposes of A1P1. In my judgment Dr Murungaru's contractual rights do not.'

50. The other authority principally relied on in this connection was the decision of the ECtHR in *Paefgen GmbH v Germany* [AP 25379/04, Decision 18/09/07]. There, the applicant company had registered thousands of domain names and concluded contracts with the registration authority which granted them exclusive use of those names. In Germany the courts had allowed claims by those with the proper title to use those domain names. The applicant company brought a claim under A1P1. The ECtHR said:

'In the instant case, the contracts with the registration authority gave the applicant company, in exchange for paying the domain fees, an open-ended right to use or transfer the domains registered in its name. As a consequence, the applicant could offer to all internet users entering the domain name in question, for example, advertisements, information or services, possibly in exchange for money, or could sell the right to use the domain to a third party. The exclusive right to use the domains in question thus had an economic value. Having regard to the above criteria, this right therefore constituted a "possession", which the court decisions prohibiting the use of the domains interfered with.'

The court then went on to reject the underlying claims on the basis that any interference with the possessions represented by the contracts with the registration authority was justified.

51. On the basis of the Assumed Facts, it would seem that the concluded contracts in this case (examples of which I have set out in paragraph 48 above) had all of the indicia of possessions in accordance with Lewison J's analysis in *Murungaru*. They were tangible; they were assignable; on the face of it they had a present economic value. Of course I accept that, if there are arguments about particular contracts, those can only be dealt with on the facts but, as a matter of general impression, I would conclude that the signed/concluded contracts in this case were assets, and therefore possessions under A1P1." (*Breyer Group Plc v Department of Energy and Climate Change* [2014] EWHC 2257 (QB).)

"On several occasions the European Court of Human Rights has held that a person's right to live in a particular property which he does not own does not, in itself, constitute a 'possession' (see, for example, *Kukalo v Russia*, Application no. 63995/00; *H.F. v Slovakia*, Application no. 54797/00; *Kovalenok v Latvia*, Application no. 54264/00; and *J.L.S. v Spain*, Application no. 41917/98). But even if the claimants

were able to say that their licences to station caravans on pitches on the Eleanor Street site should be regarded as ‘possessions’ within article 1 of the First Protocol, I cannot see how they could say that such ‘possessions’ were in any way affected by the operation of section 33(2).” (*Mahoney, R. (on the application of) v Secretary of State for Communities and Local Government* [2015] EWHC 589 (Admin).)

“23. The following principles can be extracted from the case law: (i) loss of future income is not a possession protected by A1P1; (ii) loss of marketable goodwill may be a possession protected by A1P1; (iii) a number of factors may point towards the loss being goodwill rather than the capacity to earn future profits: these include marketability and whether the accounts and arrangements of the claimant are organised in such a way as to allow for future cash flows to be capitalised; (iv) goodwill may be a possession if it has been built up in the past and has a present day value (as distinct from something which is only referable to events which may or may not happen in the future); and thus (v) if there is interference which causes a loss of marketable goodwill at the time of the interference, and if that can be capitalised, then it is *prima facie* protected by A1P1. . . .

43. The well-established distinction between goodwill and future income is fundamental to the Strasbourg jurisprudence. The consistent line taken by the ECtHR is that the goodwill of a business, at any rate if it has a marketable value, may count as a possession within the meaning of A1P1, but the right to a future income stream does not. I agree with Rix LJ that the distinction is not always easy to apply and it seems that the ECtHR has not addressed the difficulties. . . .

49. As I have said, the distinction between goodwill and loss of future income is not always easy to apply. But in my view, the judge was right to see a clear line separating: (i) possible future contracts and (ii) existing enforceable contracts. Contracts which have been secured may be said to be part of the goodwill of a business because they are the product of its past work. Contracts which a business hopes to secure in the future are no more than that.” (*Department for Energy and Climate Change v Breyer Group Plc* [2015] EWCA Civ 408.)

POSSESS; POSSESSED; POSSESSION; POSSESSIONS:

(1) POSSESSION: GENERAL. “To be pedantic the problem could be avoided by saying there are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control (‘factual possession’); (2) an intention to exercise such custody and control on one’s own behalf and for one’s own benefit (‘intention to possess’). What is crucial to understand is that, without the requisite intention, in law there can be no possession . . .” (*LA Pye (Oxford) Ltd v Graham* [2002] 3 W.L.R. 221 at 233, HL *per* Lord Browne-Wilkinson).

“... the word ‘possession’ can be used in many circumstances... it is common place for people to say of someone else that ‘he is in full possession of his faculties’ or, for example, if they have had the misfortune to lose a limb that ‘he has lost the lower part of his leg’. So the concept of possession is in fact frequently applied and understandably applied to various parts of the human body.” (*R. v Bentham* [2004] 2 All E.R. 549 at 552, CA *per* Kennedy L.J.)

“Entitled to possession and enjoyment”: see *Re Trevanion* [1910] 2 Ch. 538, cited ACTUAL.

The doctrine of state immunity is not confined to those cases in which the foreign sovereign was either directly in possession of property by himself or at least indirectly

(1) POSSESSION: GENERAL

by his servants, for if it were so confined the doctrine would not be applicable to the case of any bailment: see *United States of America v Dollfus Mieg et Cie SA* [1952] 1 T.L.R. 541.

"Possession" of "money or property" belonging to a friendly society by its officer "by virtue of his office" (Friendly Societies Act 1875 (c.60), s.15(7)) meant money or property which at his death or bankruptcy was, or at any time previously had been, in his possession by virtue of his office (*Re Atkins*, 51 L.J. Ch. 406; *Re Miller* [1893] 1 Q.B. 327). *Re Miller* was followed in *Re Eilbeck* [1910] 1 K.B. 136, cited PREFERENCE. So, a sum in a trustee's "possession, or under his control", in respect of which he is in default (Debtors Act 1869 (c.62) s.4(3)), means money at any time in his possession or under his control (*Middleton v Chichester*, 6 Ch. 152; *Crowther v Elgood*, 34 Ch. D. 691); but it must be, or have been, actually in his possession or control, as distinguished from his being merely liable for it (*Re Walker*, 60 L.J. Ch. 25), or ordered to pay it (*Ex p. Sharp*, 37 L.T. 168), or as distinguished from his having only constructively received it by the hands of his solicitor or agent (*Re Fewster* [1901] 1 Ch. 447); see further FIDUCIARY CAPACITY. This latter section applies to a married woman (*Re Turnbull* [1900] 1 Ch. 180). See TREASURER.

To pay a debt or transfer personal property to an executor before probate, e.g. for a company to transfer shares of a deceased shareholder, was to "take possession" of the money or property by the payer or transferor within Stamp Act 1815 (c.184) s.37 (*Att-Gen v New York Breweries Co* [1898] 1 Q.B. 205; affirmed in HL sub nom. *New York Breweries Co v Att-Gen* [1899] A.C. 62).

"Possession or apparent possession" (Bills of Sale Act 1878 (c.31) s.8). The rule that where possession is in appearance doubtful, apparent possession follows the legal title was held not to apply to furniture sold by a man to his domestic servant who used it merely as a member of the household. In such a case the apparent possession remains in the seller (*Youngs v Youngs* [1940] 1 K.B. 760). See also *French v Gething* [1922] 1 K.B. 236; *Koppel v Koppel (Wide Claimant)* [1966] 1 W.L.R. 802; [1966] 2 All E.R. 187.

"Man in possession" entitled to charge for possession under a distress, connotes a real and actual possession, as distinguished from what is called a constructive or walking possession (*Lumsden v Burnett* [1898] 2 Q.B. 177).

As to the "possession" required on the part of a high bailiff to entitle him to his fees, see *AW Ltd v Cooper & Hall Ltd*, 94 L.J.K.B. 831.

Possession under a distress for rent does not require that some one should be actually on the premises (*Bannister v Hyde*, 29 L.J.Q.B. 141; *Jones v Beinstein* [1900] 1 Q.B. 100).

"Taking possession": the giving of notice to an under-tenant under s.6 of the Law of Distress Amendment Act 1908 (c.53) does not constitute "the taking of possession of property" within the Courts (Emergency Powers) Act 1939 (c.67) s.1(2)(ii). "In the absence of a clear context, the words 'take possession' are suitable only to the case of physical things" (per CA) (*Wallrock v Equity & Law Life Assurance Society* [1942] 2 K.B. 82).

A police fee for "keeping possession of the goods" distrained under a justice's warrant, is chargeable though there be no possession of any premises, e.g. where a passive resister was distrained on for rates and his watch was taken and kept in possession until sold (*Scott v Denton* [1907] 1 K.B. 456).

"Possession" (Writ of Possession old R.S.C. Appendix H Form No.8, now R.S.C. Appendix A Form No.66) means vacant possession (*Norwich Union Life Insurance Society v Preston* [1957] 1 W.L.R. 813).

"Possession, custody or power" (R.S.C. Ord.24 r.7(1)). Company documents, although in the legal possession of the company, might be required to be disclosed, under this rule, by a director of the company who was a party to the suit if they were or had been in his actual "possession", even though he held them merely as a servant of the company. Furthermore, even where the documents had never been in his "custody", he might be required to disclose them because they were in his "power", in that he might have an enforceable right to obtain possession or control of them for purposes of inspection. Although documents would not be in his "power" merely because he had a right to inspect them by virtue of s.12 of the Companies Act 1976 (c.69) (*B. v B.* [1979] 1 All E.R. 801). See also POWER.

"Possession" (Married Women's Property Act 1882 (c.75) s.17) covers a case where under the law of the domicile the doctrine of community of property obtains (*Re Bettinson's Question* [1956] Ch. 67).

"Possession" (Merchandise Marks Act 1887 (c.28) s.2) included the storage by wholesale butchers of chickens with a cold storage company on the terms that the storers had a lien on the chickens, but the butchers could withdraw them on demand by producing a voucher (*Towers & Co v Gray* [1961] 2 Q.B. 351).

Officers or employees of a company who have access to, and the use of documents which are the property of the company, are "in possession" of those documents for the purposes of discovery (*Skoye v Bailey* [1971] 1 W.W.R. 144).

Goods which are not for dispatch until checked are not yet in "possession for sale" within s.22(2) of the Weights and Measures Act 1963 (c.31) (*Worsley, Ben v Harvey* [1967] 1 W.L.R. 889).

A licensee was held not to be in "possession" of a liquor measuring instrument within the meaning of s.16(1) of the Weights and Measures Act 1963 (c.31) where it was not under his control and was supplied and maintained by the company on whose behalf he held the licence (*Bellerby v Carle and Arthur* [1983] 2 W.L.R. 687).

"Possession and enjoyment" (Customs and Inland Revenue Act 1889 (c.7) s.11): as excluding possession and enjoyment as trustee, see *Commissioners for Stamp Duties, New South Wales v Perpetual Trustee Co* [1943] A.C. 425.

"Possession of unwholesome meat" (Public Health Act 1875 (c.55) s.117): see *Newton v Monkcom*, 58 L.T. 231. See hereon *Neilson v Parkhill*, 30 S.L.R. 247; see also *Webb v Baker* [1916] 2 K.B. 753.

As to the meaning of "fraudulently allure, etc. a woman, under the age of 21 years, out of the possession and against the will of her father or mother" (Offences Against the Person Act 1861 (c.100) s.53), see *R. v Burrell*, 33 L.J.M.C. 54. And as to a similar use of "possession" in s.55 of the same Act, see *R. v Manktelow*, 22 L.J.M.C. 115, Dears. 159; *R. v Timmins*, 30 L.J.M.C. 45; see further TAKE.

For a man charged with receiving stolen goods to be found to have had "possession", actual or constructive, of the goods, something more must be proved than that the goods have been found on his premises (*R. v Cavendish* [1961] 1 W.L.R. 1083).

(1) POSSESSION: GENERAL

Milk is in the “possession” of a farmer within s.9 of the Food and Drugs (Milk, Dairies and Artificial Cream) Act 1950 (c.35)—see Food and Drugs Act 1955 (c.16) s.32—if it is at a delivery point within the curtilage of the farm (*Challand v Bartlett* [1953] 1 W.L.R. 1105).

The owner of a restaurant was held to have in his “possession for the purposes of preparation for sale”, within the Food and Drugs Act 1955 (c.16) s.8(1)(a), a tray of dried fruit puddings, on the basis that, in a restaurant, articles commonly used for human consumption are intended for such purposes (*Hooper v Petron* (1973) 71 L.G.R. 347).

(Firearms Act 1968 (c.27) s.2(1)). Where a person left his shotgun at another’s house for cleaning and safekeeping while both of them were on holiday, the recipient was in possession of the shotgun within the meaning of this section (*Hall v Cotton* [1986] 3 W.L.R. 681). Where, to oblige a friend, a man looked after a bag which, without him knowing it, contained a sawn-off shotgun, he was guilty of possession a firearm without a certificate contrary to this section. The offence is one of strict liability (*R. v Waller* [1991] Crim. L.R. 381).

“Controlled drug in his possession” (Misuse of Drugs Act 1971 (c.38) s.5(2)). A man who put a small quantity of cannabis into his wallet, knowing what it was, remained in “possession” of it within the meaning of this section even though he had long forgotten it was there (*R. v Martindale* [1986] 1 W.L.R. 1042). A woman who did no more than live with a man at a time when he possessed and dealt in drugs was not herself guilty of possession, notwithstanding that she must have known what he was doing (*R. v Bland* [1988] Crim. L.R. 41). Where an accused was apprehended while delivering a box containing cannabis resin to a co-defendant, he was held to be guilty of having a “controlled drug in his possession”, notwithstanding his claim that he thought the box contained pornographic videos (*R. v McNamara* (1988) 87 Cr.App.R. 246). In construing the word “possession” the question to be asked was whether on the facts the defendant had been proved to have, or ought to have imputed to him, the intention to possess what was in fact a controlled drug (*R. v Lewis* (1988) 87 Cr.App.R. 270).

“Goods in the company’s possession under any hire-purchase agreement” (Insolvency Act 1986 (c.45) s.11(3)(c)). Where a company was in possession of goods which came into its possession under the terms of a leasing agreement they remained “goods in the company’s possession under any hire-purchase agreement” within the meaning of this section notwithstanding that the leasing agreement terminated on or before presentation of a petition by the company for an administration order (*Re David Meek Access; Re David Meek Plant* [1993] B.C.C. 175).

A future claim is not a possession for the purposes of the First Protocol to the European Convention on Human Rights (*Re T. & N.* [2005] EWHC 2870 (Ch)).

“But possession of indecent images of children on a computer presents special problems. It may seem superficially attractive to say that all that is required to prove a breach of s.160(1) of the 1988 Act is that, to the knowledge of the defendant, the images were on the defendant’s hard disk drive within the computer which was in his custody and control at the material time. It can be argued that possession is an ordinary English word which should be given its normal meaning. Parliament has mitigated the harshness that would result from giving the word its normal meaning by expressly providing three defences in s.160(2) and impliedly providing that knowledge is an essential element of the offence. On this interpretation (which was adopted by the

judge in the present case), the fact that the images may be difficult or even impossible to retrieve is irrelevant. But this interpretation could give rise to consequences so unreasonable that we are not willing to accept it unless we are compelled to do so by the express words of the statute or by necessary implication. Its unreasonableness is well illustrated by the present case. . . . It is accepted by the Crown that in reality the appellant could not have retrieved these images. In our judgment, it offends common sense to say that they were in the possession of the appellant on 5 November 2002. . . . It is not, however, necessary to postulate such an extreme example to demonstrate that the judge's view leads to unreasonable results. . . . In *DPP v Brooks* [1974] AC 862, 866H, Lord Diplock giving the judgment of the Privy Council said: 'In the ordinary use of the word "possession", one has in one's possession whatever is, to one's knowledge, physically in one's custody or under one's physical control.' That was said in the context of a case about unlawful possession of drugs. In a similar context and to similar effect, Lord Scarman said in *R v Boyesen* [1982] AC 768, 773H: 'Possession is a deceptively simple concept. It denotes a physical control or custody of a thing plus knowledge that you have it in your custody or control.' It is true that the context of possession of photographs or pseudo-photographs on the hard drive of a computer is different from the context of possession of drugs. Making allowance for those differences, however, in seeking to elucidate the meaning of 'possession' in s.160(1) in the present context, we see no reason not to import the concept of having custody or control of the images. . . . In these circumstances, we see no objection to interpreting the word 'possession' in the particular context of the possession of images in a computer as referring to images that are within the defendant's control." (*R. v Porter* [2006] EWCA Crim 560.)

As to whether a licence or permission can be a possession for the purposes of the provisions of the European Convention on Human Rights protecting interference with the right to enjoyment of possessions, see *R. (Nicholds) v Security Industry Authority* [2006] EWHC 1792 (Admin).

A personal right to practice in the National Health Service arising out of inclusion in a list is not a possession for the purposes of the Convention (*R. (Malik) v Waltham Forest NHS Primary Care Trust* [2007] EWCA Civ 265 (a case which considered *Nicholds*, above)).

For a case applying the rules in *JA Pye (Oxford) Ltd v Graham* [2002] UKHL 30 about the nature of possession of real property, see *Jones v Merton London Borough Council* [2008] EWCA Civ 660. See also OCCUPATION.

A right to receive a social security or welfare benefit is a possession for the purposes of art.1 of the First Protocol to the European Convention on Human Rights (*R. (RJM) v Secretary of State for Work and Pensions* [2008] UKHL 63).

The concept of possession in the context of leasehold includes the right to receive rents and profits. Possession must be distinguished from occupation (*Clarence House Ltd v National Westminster Bank Plc* [2009] EWHC 77 (Ch)).

For extensive discussion of the meaning of "possession" for the purposes of a claim in conversion, see *Mainline Private Hire Ltd v Nolan* [2011] EWCA Civ 189.

"The term 'possessions' in Article 1 of the First Protocol bears an autonomous meaning: it includes rights in property and rights to property. There is protection for familiar property interests in physical things of significant economic value. There is also protection for rights in judgments, awards and recognised property claims under domestic law, such as a claim to payment of state compensation or a claim to

(2) POSSESSION: REAL PROPERTY

repayment of VAT paid under a mistake.” (*R. (on the application of Huitson) v Revenue and Customs* [2011] EWCA Civ 893.)

“At this stage of my judgement I should deal, briefly, with the issue of whether this licence [for private hire vehicles] constitutes a ‘possession’ within the meaning of that term in Article 1 of the First Protocol of the European Convention of Human Rights. Counsel before me were agreed that it did not. I agree with their concession. While the contention that the licences in this case were ‘possessions’ might appear to be supported by the Court of Appeal decision in *Crompton v Department of Transport North-Western Area* [2003] EWCA Civ 64, that the licence in that case was a ‘possession’ was assumed by the court without argument. Before Counsel’s agreement I had concluded that the later decision of the Court of Appeal in *Waltham Forest NHS Primary Care Trust and Secretary of State for Health v Malik* [2007] EWCA Civ 265 does appear to be indistinguishable from this case. Here, as in *Malik*, there is no evidence that the refusal to renew the licence would affect any ‘goodwill’ of Mr Anwar’s business, nor that it would diminish any of the other assets of the business. The licence itself is not marketable, nor does it bear any premium. It is not bought at a market value. *Crompton* is cited in *Malik* and the court in *Malik* appears to have regarded it as a decision made *per incuriam*. That is, I consider I am bound by *Malik*, and indeed that decision appears to me to be completely consistent with a not always easily interpretable line of European authorities. I therefore conclude that the licences in this case do not comprise ‘possessions’ within the meaning of article 1.” (*Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin).)

Stat. Def., “in relation to a pupil, includes any goods over which he appears to have control” (*Education and Inspections Act 2006 s.95*).

See also *SHARE; HOLDING*.

(2) POSSESSION: REAL PROPERTY. “Possession is said two waies, either actual possession, or possession in law. Actual possession is when a man entreth in deed into lands or tenements to him descended, or otherwise. Possession in law is when lands or tenements are descended to a man, and hee hath not as yet really, actually, and in deed, entreth into them: And it is called possession in law because that in the eye and consideration of the law, he is deemed to be in possession, forasmuch as he is tenaunt to every mans action that will sue concerning the same lands or tenements” (*Termes de la Ley, Possession*).

Sometimes “in possession”, in relation to an estate—e.g. in the phrase “Estate tail in possession” in a will—will be construed as “vested” (*Foley v Burnell*, 1 Bro. C.C. 274; *Foley v Burnell* was distinguished in *Re Chesham* [1909] 2 Ch. 329, but applied *Re Harcourt* [1922] 2 A.C. 473; *Martelli v Holloway*, L.R. 5 H.L. 532).

But generally where an estate or interest in realty is spoken of as being “in possession”, that does not primarily mean the actual occupation of the property, but means the present right thereto or to the enjoyment thereof (*Ren v Bulkeley*, 1 Doug. 292), as distinguished from reversion, remainder, or expectancy, as illustrated by the old conveyancing phrase, “in possession, reversion, remainder, or expectancy”. In this sense the word is employed at the commencement of Settled Land Act 1882 (c.38) s.58—see now Settled Land Act 1925 (c.18) s.20 (*Re Morgan*, 24 Ch. D. 114); but see *Re Edwards* [1897] 2 Ch. 412, cited *OCCUPATION*, and in s.2(5) of the same Act—see now s.19 of 1925 Act (*Re Atkinson*, 31 Ch. D. 577). See also *COME TO*.

So, a power of leasing conferred on each succeeding tenant for life “as and when he shall be entitled to the possession or the receipt of the rents and profits” is referable to

the falling into possession of the several life interests, and not to the unencumbered beneficial enjoyment thereof; and is exercisable by the donee although he has alienated his life interest (*Lonsdale v Crawford* [1900] 2 Ch. 687). See ENTITLED IN POSSESSION.

But in a shifting clause in the event of "any person for the time being entitled to the possession or to the receipt of the rents and profits" succeeding to a title, the idea that "possession" was used in contradistinction to "reversion" was rejected, and "possession" was construed "actual possession" which the devisee was prevented from having a trustee's management clause (*Leslie v Rothés* [1894] 2 Ch.499; see further *Fazakerly v Ford*, 2 L.J.K.B. 111).

A statutory tenant who left his mistress in the premises was held not to have retained "possession" within the meaning of s.15(1) of the Rent Act 1920 (c.17) (*Thompson v Ward* [1953] 2 Q.B. 153).

As to the meaning of "possession" and "actual possession" in Rent and Mortgage Interest Restrictions Act 1923 (c.32) s.2, see *Jewish Maternity Home Trustees v Garfinkle*, 42 T.L.R. 589.

An order for delivery up of possession of premises to a mortgagee may be made under the old R.S.C. Ord.55 r.5A, now Ord.88 r.1, against the person who is in possession, whether he derived title under the mortgagor or not (*Alliance Building Society v Varma* [1949] Ch. 724).

In a covenant against parting with possession of premises the word "possession" should be given a strict meaning; but possession can be shared (*Akici v LR Butlin Ltd* [2005] EWCA Civ 1296).

"Possession" (Landlord and Tenant Act 1954 (c.56) s.30(1)(f)) means the legal right to possession of land, and this is retained by the tenant even if he has to vacate the premises while the landlord carries out some necessary reconstruction (*Heath v Drown* [1972] 2 W.L.R. 1306). It means the legal right to possession, and is not confined to actual physical possession (*Heath v Drown* [1973] A.C. 498).

"Lawful possession of the land" (Land Compensation Act 1973 (c.26) s.37(2)(a)). "Possession" here means actual physical occupation with the intention to exclude intruders (*Wrexham Maelor BC v MacDougall*, T.L.R. April 7, 1993).

Receivers who had been appointed agents under debentures were not by reason of their appointment "entitled to possession" of premises for the purposes of the Local Government Finance Act 1988 (c.41) s.65(1)), and were thus not owners liable for unoccupied property rates (*Brown v City of London Corp* [1996] 1 W.L.R. 1070).

See also NON-ADVERSE POSSESSION.

(3) INTERESTS IN POSSESSION. "Interest in possession" (Finance Act 1975 (c.7) Sch.5 para.6(2)). Where property is held on trust to pay income to a beneficiary but with power reserved to the trustees to withhold the income by accumulating it, the beneficiary does not have an "interest in possession" for capital transfer tax purposes within the meaning of this paragraph (*Pearson v IRC* [1980] 2 W.L.R. 872).

The single object of a discretionary trust did not immediately before his death have an "interest in possession" in settled property if there was a possibility of further objects of the trust coming into existence at some time in the future (*Moore v IRC* [1984] 1 All E.R. 1108).

Where the trustees of a settlement exercised a power of appointment over capital in favour of the settlor's daughter, before capital transfer tax was introduced, the effect was to give the daughter an "interest in possession" within the meaning of this

(4) POSSESSIONS FOR PURPOSES OF HUMAN RIGHTS

Schedule, so that no liability to capital gains tax arose when the granddaughter attained the age of 21 (*Swales v IRC* [1984] 3 All E.R. 16).

If a lease is granted by a tenant for life in substitution for an existing lease which is surrendered, the new lease takes effect “in possession” for the purposes of s.42(1)(i) of the Settled Land Act 1925 (c.18), notwithstanding the existence of an under-lease granted out of the lease so surrendered (*Re Grosvenor Settled Estates* [1932] 1 Ch. 232).

For the purposes of the Law of Property Act 1925 (c.20) s.54(2), a lease to commence at a future date is not a lease “taking effect in possession” (*Long v Tower Hamlets LBC* [1996] 3 W.L.R. 317).

(4) POSSESSIONS FOR PURPOSES OF HUMAN RIGHTS. A legitimate expectation relating to property may constitute a possession protected by art.1 of the First Protocol to the European Convention on Human Rights (*Rowland v Environment Agency* [2003] 2 W.L.R. 1233, Ch).

The payment of national insurance contributions can give rise to a species of pecuniary right constituting a possession for the purposes of art.1 of the First Protocol to the European Convention on Human Rights (*R. (Carson) v Secretary of State for Work and Pensions* [2003] 3 All E.R. 577, CA).

Rights under a retirement annuity contract are possessions within the meaning of the First Protocol to the European Convention on Human Rights (*Re Malcolm* [2004] 1 W.L.R. 1803, Ch).

An expectation relating to property can be a possession for the purposes of art.1 of the First Protocol to the European Convention on Human Rights (*Rowland v Environment Agency* [2004] 3 W.L.R. 249, CA).

An accrued right to costs is a possession for the purposes of the First Protocol to the European Convention on Human Rights (*R. (Thompson) v Law Society* [2004] 1 W.L.R. 2522, CA).

A legitimate expectation in respect of burial could amount to a possession for the purposes of art.1 of the First Protocol to the European Convention on Human Rights (*Re West Norwood Cemetery* [2005] 1 W.L.R. 2176, Southwark Consistory Court).

Pensions are “possessions” within the meaning of art.1 of the First Protocol to the European Convention on Human Rights (*Ministre de la defense C. M. Diop; Ministre de l'economie, des finances et de l'industrie C. M. Diop* PL [2002] 376, French Conseil d'Etat).

Contractual rights are possessions within the meaning of art.1 of the First Protocol to the European Convention on Human Rights (*Wilson v First County Trust Ltd (No.2)* [2003] 3 W.L.R. 568, HL).

A right to apply for a continuation of a business tenancy is a possession for the purposes of the First Protocol to the Convention on Human Rights (*Pennycook v Shaws (EAL) Ltd* [2004] 2 W.L.R. 1331, CA).

(5) POSSESSIONS: MISCELLANEOUS. Employment as an agent in West Africa under a contract of service with a British company is not a “possession out of the United Kingdom” so as to render the employed person if resident in the United Kingdom chargeable to income tax under Case V Sch.D (see s.132 of the Income Tax Act 1952 (c.10)) in respect of salary and commission received by him; see *Pickles v Foulsham* [1924] 1 K.B. 323; affirmed [1925] A.C. 458. See also *Bray v Colenbrander* [1953] A.C. 503.

(6) **“OF WHICH I STAND POSSESSED”, &c.** “‘Possessed’ is peculiarly applied to personalty, and a gift coupled with that word would, *prima facie*, imply personal estate” (per Turner V.C., *Stokes v Salomons*, 20 L.J. Ch. 343; see further *Wilde v Holtzmeier*, 5 Ves. 816; *Coard v Holderness*, 20 Bea. 147).

As to whether the use of the word “possess”, in any of its inflections, will limit a general testamentary gift to personalty, e.g. in such a phrase as “all I am possessed of”, see ALL.

“Effects I die possessed of”: see *Michell v Michell*, 5 Mad. 72, cited EFFECTS.

“Everything else I die possessed of”: see EVERY THING ELSE.

“Moneys I die possessed of”: see *Re Greaves*, 23 Ch. D. 313; *Petty v Willson*, 4 Ch. 574; *Byrom v Brandreth*, L.R. 16 Eq. 475, cited MONEY; *Chapman v Reynolds*, 29 L.J. Ch. 594. See GENERAL POWER.

“Money of which I am possessed”: see *Re Cadogan*, 25 Ch. D. 154, following *Prichard v Prichard*, L.R. 11 Eq. 232, and dissenting from *Larner v Larner*, 26 L.J. Ch. 668; MONEY.

“Now possessed or entitled”: see NOW.

Property, as mentioned in a settlement, which a wife during the coverture may become “possessed of”: see *Wilton v Colvin*, 25 L.J. Ch. 850; see thereon *Archer v Kelly*, 6 Jur. N.S. 814.

Stat. Def., Trustee Act 1925 (c.19) s.68.

(7) **STATUTORY DEFINITIONS.** Law of Property Act 1925 (c.20) s.205; Administration of Estates Act 1925 (c.23) s.55; Land Registration Act 1925 (c.21) s.3; Settled Land Act 1925 (c.18) s.117; Trustee Act 1925 (c.19) s.68; Ancient Monuments and Archaeological Areas Act 1979 (c.46) s.61; Matrimonial and Family Proceedings Act 1984 (c.42) s.27.

See also: ACTUAL; ACTUAL FREEHOLD; ENTITLED; ENTITLED IN POSSESSION; FULL POSSESSION; POSSESSION, ORDER OR DISPOSITION; HEIR IN POSSESSION; EXCLUSIVE POSSESSION; IMMEDIATE POSSESSION; OCCUPATION; ACTUAL POSSESSION; ADVERSE POSSESSION.

POSSESSION FOR COMMERCIAL PURPOSES. See *Football Association Premier League Ltd v QC Leisure* [2008] EWHC 1411.

POSSESSORY. Possessory lien of a shipbuilder for repairs to a ship: see *The Scio*, L.R. 1 A. & E. 353.

A possessory title to land might perhaps be defined as a title undefended by muniments and the holder of which had only undisturbed and unqualified length of possession on which to rely: see hereon Real Property Limitations Act 1833 and 1874. Under the Land Transfer Act 1897 (c.65), a person might apply for registration “with a possessory title”, if he made a declaration that he was “in possession [or, receipt of the rents and profits]” and that he was somehow entitled (Pt 2 of the Land Transfer Rules 1898, and Form 2 of Sch.1); but, semble, such a title never “ripens into absolute title” (Land Transfer Act 1875 (c.87) s.8; L.T. Rules 1898 r.18). But see now Land Registration Act 1925 (c.21) s.6.

Land may be registered with a possessory title where the applicant or his nominee gives such evidence of title and serves such notices, if any, as are for the time being prescribed (Land Registration Act 1925 (c.21) s.4(a)(ii)). However, such registration shall not adversely affect any title subsisting or capable of arising at the time of registration (s.6).

POSSIBLE

POSSIBLE. Where a manufacturer undertakes to supply an article “as soon as possible”, that means with all reasonable promptitude and in the shortest practicable time, regard being had to the manufacturer’s ordinary means of business, and the orders he may reasonably be assumed to have already in hand (*Attwood v Emery*, 26 L.J.C.P. 73, explained by *Hydraulic Engineering Co v McHaffie*, 4 Q.B.D. 670).

See *Verelst’s Administratrix v Motor Union Insurance Co* [1925] 2 K.B. 137.

“To do a thing ‘as soon as possible’ means to do it within a reasonable time, with an understanding to do it within the shortest possible time” (per Dysant J., *King’s Old Country Ltd v Liquid Carbonic Can Corp Ltd* [1942] 2 W.W.R. 603 at 606).

Directions in a will to trustees to sell a farm “as soon as possible” are sufficiently imperative to indicate an intention contrary to any power to postpone sale which is implied under s.25(1) of the Law of Property Act 1925 (c.20), and the court will give effect to such an intention (*Re Rooke, Rooke v Rooke* [1953] Ch. 716).

A duty to do a thing “if possible” means, generally, if reasonably possible in a business sense (per Esher M.R., *Assicurazione Generali v Bessie Morris Co* [1892] 2 Q.B. 652; and in *Shepherd v Kottgen*, 2 C.P.D. 585). See further IMPRACTICABLE.

So, where a local Act modified the then law requiring furnaces to consume their own smoke by enacting that they should do so “as far as possible”, this was held to mean “as far as possible consistently with carrying on the manufacture in question” (*Cooper v Woolley*, L.R. 2 Ex. 88). The general phrase hereon now is “as far as practicable” (Public Health Act 1875 (c.55) s.91 proviso 2. Cp. now Public Health Act 1936 (c.49) s.103(2)).

A rule of a managing committee of a publication to obtain literary compositions “as far as possible without expense”, does not authorise one of the committee to contract for contributions to be paid for (*Heraud v Leaf*, 5 C.B. 157).

“To load with all possible despatch”: see *Hudson v Clementson*, 18 C.B. 213. See further NEARLY AS POSSIBLE.

“If possible”: see *Wilson v Kynock* [1877] W.N. 164.

“All possible care”: a motorist has not been using all possible care if he sees a stationary vehicle and, when there is room to pass, collides with it (*Randall v Tarrant* [1955] 1 W.L.R. 255).

As to when it is “possible” to read a provision in a manner which is compatible with the European Convention on Human Rights, see *R. (D.) v Secretary of State for the Home Department* [2003] 1 W.L.R. 1315 at 1327, Q.B.D. per Stanley Burnton J.

Quarter Sessions “next practically possible”: see NEXT.

To discharge a cargo “as fast as you can”: see CUSTOMARY.

See IMMEDIATELY; IMPOSSIBLE; NECESSITY; PRACTICABLE; REASONABLE.

POST. The word “post”, in s.437 of the Companies Act 1948 (c.38) (which provides for service on a limited company) is wide enough to include both ordinary and registered post and therefore a company is properly served with a writ which is sent by registered post to its registered office (*TO Supplies (London) v Jerry Creighton* [1952] 1 K.B. 42).

See *Browne v Black* [1912] 1 K.B. 316, cited DELIVERY.

“Post Office”: see POSTAL.

“Travelling post” (Duties on Post Horses Act 1785 (c.51)): see *R. v Tooley*, 3 T.R. 69; *R. v Swift*, 8 East 584 fn; Stamp Act 1804 (c.98) Sch.B; *Welsford v Todd*, 8 East 580.

"In the ordinary course of post" (Companies Act 1948 (c.38) Sch.1 Table A, art.131). These words are not confined to post within the United Kingdom (*Parkstone v Gulf Guarantee Bank* [1990] B.C.C. 534).

See BY POST; ORDINARY COURSE; PER.

POSTAL OPERATOR. For discussion of the meaning of 'postal operator' and 'by post' in s.27 of the Postal Services Act 2011 see *DHL International (UK) Ltd ('DHL'), R (on the application of) v The Office of Communications* [2016] EWHC 938 (Admin).

POST CARD. See PER PACKET. "Reply post card": see REPLY.

POST LETTER. For the purpose of the Post Office (Offences) Act 1837 (c.36) s.47, "post letter" did not include a letter not posted in the ordinary course, but put by a post official amongst letters so posted as a trap for a suspected person (*R. v Rathbone*, 2 Moo. 242; *R. v Shepherd*, 25 L.J.M.C. 52); but, if duly posted, a letter was none the less a "post letter" because addressed to a fictitious person as a trap (*R. v Young*, 2 C. & K. 466, overruling *R. v Gardner*, 1 C. & K. 628).

POST-NUPTIAL SETTLEMENT. A post-nuptial settlement within the meaning of the Supreme Court of Judicature (Consolidation) Act 1925 (c.49) s.192 is one in which the settlement is upon and for the financial benefit of one or both of the spouses in their character as spouses: see *Prinsep v Prinsep* [1929] P. 225. See also *Lort-Williams v Lort-Williams* [1951] P. 395. See Matrimonial Causes Act 1950 (c.25) s.25.

A "post-nuptial settlement" (Matrimonial Causes Act 1950 (c.25) s.25) does not include a settlement for the maintenance of a wife and children made after the decree nisi but before the divorce has been made absolute (*Young v Young (No.1)* [1962] P. 27). See also *Sievwright v Sievwright* [1956] 1 W.L.R. 1452; *Compton v Compton & Hussey* [1960] P. 201; *Cook v Cook* [1962] P. 181.

(Matrimonial Causes Act 1973 (c.18) s.24(1)(c).) A sole member pension scheme entered into by a husband with the intention of providing financial support for himself and his wife during retirement with benefits available to the wife in the event of his death was a post-nuptial settlement capable of variation under the 1973 Act (*Brooks v Brooks* [1994] 3 All E.R. 257).

POST OBIT. A post obit bond or other obligation is one that is payable on or after the death of a person other than the maker, e.g. one by an expectant heir payable on or after the death of the tenant for life of family estates; if unconscionable, it may be set aside (*Chesterfield v Janssen*, 2 Ves. Sen. 158 et seq.).

POST OFFICE. Stat. Def., Post Office Act 1908 (c.48) s.89; Post Office Act 1953 (c.36) s.87(1); s.125(1) of the Postal Services Act 2000 (c.26).

A covenant to use demised premises as a "post office" only is not broken by issuing therefrom Inland Revenue licences (*Wadham v Postmaster-General*, 24 L.T. 545).

POSTAGE. Stat. Def., Post Office Act 1908 (c.48) s.89; Post Office Act 1953 (c.36) s.87(1); Post Office Act 1969 (c.48) s.123.

See BRITISH POSTAGE; COLONIAL; DOUBLE; FOREIGN; INLAND; PACKET; SINGLE POSTAGE; TREBLE.

POSTAL. "Postal correspondence", as regards Hague Convention No.11: see *The Noordam* [1920] A.C. 904, cited ENEMY PROPERTY.

"Postal packet": Stat. Def., Post Office Act 1953 (c.36) s.87(1).

POSTAL OPERATOR. Stat. Def., s.125(1) of the Postal Services Act 2000 (c.26).

POSTAL SERVICES. Stat. Def., s.125(1) of the Postal Services Act 2000 (c.26); see also Stat. Def., s.2(1) of the Regulation of Investigatory Powers Act 2000 (c.23).

POSTER. See BILL; BANNER.

POSTERITY. See DESCENDANTS.

POSTHUMOUS CHILD. It is said, "If a father gives a legacy to provide for a child *en ventre sa mère* by the term of a 'posthumous child' and he happens to survive its birth, it will still be considered a posthumous child within the meaning of the will" (Wms. Exs. (12th edn), 700, citing *Jaggard v Jaggard*, Pr. Ch. 177). But that proposition and case, and also *White v Barber* (5 Burr. 2703), were cited in *Doe d. Blakiston v Haslewood* (20 L.J.C.P. 89), in which case the facts were that a testator (contemplating his early death which did not happen) devised lands to his wife for life, with remainder in fee to his nephew, but if his wife should give birth to a posthumous child then such child to take to the exclusion of his nephew, and a child was born in the lifetime of the testator; held, that such child did not take, and that the devise to the nephew remained undisplaced; and, if necessary, the court was prepared to overrule *White v Barber*. See hereon 10 Encyc. 243–248.

POSTPONE. An unrestricted power to trustees to postpone a sale will not be limited by the court; and a power to postpone the sale of a business involves the power of continuing the business in the meantime (*Re Chancellor*, 26 Ch. D. 46, 47; *Re Crowther* [1895] 2 Ch. 56). See SPECIE; PRODUCE; see also *Re Elford* [1910] 1 Ch. 814; *Re Inman* [1915] 1 Ch. 187.

Such a power does not authorise postponement for a defined time, but has to be exercised from time to time according to the exigency of the circumstances for the time being, and must (unless otherwise directed) be exercised by the trustees unanimously (*Re Roth*, 74 L.T. 50); and should be exercised as a matter of prudent management (*Rowlls v Bebb* [1900] 2 Ch. 107, cited PRODUCE). See further PROFITS.

"When the estate becomes divisible, the power to postpone ceases and comes to an end of itself" (per Chitty J., *Re Crowther* [1895] 2 Ch. 60).

In the absence of proper directions, it has been held by Warrington J. that a TENANT FOR LIFE is not entitled to enjoy, *in specie*, unauthorised investments (whether wasting, or other) during an authorised postponement of their sale or during their authorised retention unconverted; he is entitled to 3 per cent per annum on their value at the testator's death (*Re Chaytor* [1905] 1 Ch. 233, applying *Re Thomas* [1891] 3 Ch. 482, and *Re Woods* [1904] 2 Ch. 4, and rejecting *Bulkeley v Stephens*, 10 L.T. 225); but, semble, that is hardly in accord with the ruling of North J., *Re Sheldon* (39 Ch. D. 50), and of Kekewich J., *Re Bates* (51 S.J. 20, 27), in cases where the investments are only hazardous and are not wasting; see also *Beech* [1920] 1 Ch. 40; see further *Re Chancellor*, 26 Ch. D. 42, cited PROFITS. As regards real estate, "I think the authorities are perfectly clear that where you have a trust for sale of real estate and the proceeds are settled on a tenant for life, then, at any rate, so long as the sale is not improperly postponed, the person entitled to the income of the proceeds of sale is entitled to the rents and profits of the estate until sale" (per Kekewich J., *Re Searle* [1900] 2 Ch. 829, applied *Re Darnley* [1907] 1 Ch. 159). See further *Re Oliver* [1908] 2 Ch. 74; Law of Property Act 1925 (c.20) s.25 (statutory power to postpone). Cp. *Re Smith* [1902] 2 Ch. 667, cited RETAIN.

POTATO. Stat. Def., "any tuber or true seed of *Solanum tuberosum* L. or other tuber-forming species or hybrid of the genus *Solanum* L." (Potatoes Originating in Egypt Regulations 1998 (No.201) reg.2).

See MADE FROM POTATO.

POTENTIAL EMOLUMENTS. Funds held which could be used to pay emoluments are potential emoluments for the purposes of s.43 of the Finance Act 1989 (*MacDonald v Dextra Accessories* [2005] UKHL 47).

POULTER'S ACT. The Apportionment Act 1834 (c.22).

POULTRY. "Poultry" (Fertilisers and Feeding Stuffs Act 1926 (c.45) s.2(2)) does not include pheasants and partridges (*Henry Kendall & Sons v William Lillico & Sons* [1969] 2 A.C. 31).

"Poultry farming" (Rating and Valuation (Apportionment) Act 1928 (c.44) s.2(2)). Small areas of land near broiler houses used for the isolation or sterilisation of equipment used in the houses, and for the dumping of litter, were not used for the purposes of "poultry farming" within the meaning of this section (*Gilmore v Baker-Carr* [1962] 1 W.L.R. 1165).

Stat. Def., Dogs (Protection of Livestock) Act 1953 (c.28) s.3(1); Protection of Birds Act 1954 (c.30) s.14(1); Animal Health Act 1981 (c.22) s.87; Wildlife and Countryside Act 1981 (c.69) s.27.

POUND. "A pound (*parcus*, which signifies any inclosure) is either pound overt, i.e. open overhead; or pound covert, i.e. close" (3 Bl. Com. 12). See further OVERT; "open pound", under OPEN, and on the authority of the passage from Co. Litt. there cited it may probably be said that an open pound is one which is accessible to the owner of the impounded animals. See IMPOUND; IMPOUND OR CONFINE.

A "pound", when a payment or money is referred to, meant 20s.; and a covenant to pay so many "pounds", without more, means pounds in money (per Twisden J., *Hookes v Swaine*, 1 Sid. 151). In *Re Buller* (74 L.T. 406) a gift of "440 invested" in a stated company was held by Stirling J., to mean shares of that nominal amount in the company.

A contract to pay so many pounds, whether a British or Australian contract, is not a contract to pay in gold, but is prima facie a contract to pay money according to the currency of the country where payment has to be made (*Adelaide Electric Supply Co v Prudential Assurance Co* [1934] A.C. 112; and see *Auckland Corp v Alliance Assurance Co* [1937] A.C. 587). In Queensland debentures of 1895, a promise to pay in "pounds sterling" was made, the Queensland law was held to determine the meaning of this phrase in *Bonython v Commonwealth of Australia* [1951] A.C. 201. See also *National Bank of Australasia Ltd v Scottish Union and National Insurance Co Ltd* [1952] 2 T.L.R. 254.

So also where the contract is for payment of a specified amount of the current coin of a country which subsequently goes off gold (*Ottoman Bank of Nicosia v Chakarian* [1938] A.C. 260). Otherwise where payment is to be of pounds sterling, see STERLING.

As to supplying the omission of "pounds" when only the figure is stated, see *Mourmand v Le Clair* [1903] 2 K.B. 216, cited BLANKS.

To "pound" stone, is more than to break it: see *R. v Baddeley*, 70 J.P. 346, cited BREAK.

Pound used in relation to the impounding or confining of animals: see Protection of Animals Act 1911 (c.27) s.15.

Stat. Def., Weights and Measures Act 1963 (c.31) s.1 Sch.1.

POUNDAGE. Poundage was a subsidy of 12d. in the on all merchandise exported or imported (Cowel).

"Sheriff's poundage": see EXECUTION.

POUR. “Pouring molten metal” (Iron and Steel Foundries Regulations 1953 (SI 1953/1464) reg.8 (1)(c)) includes the preparation by a workman of a ladle of molten metal in order to pour it (*Smith v James Dickie & Co (Drop Forgings) Ltd*, 1961 S.L.T. (N.) 32). See also *Marshall v Babcock & Wilcox Ltd*, cited SUITABLE.

POURPRESTURE. See PURPRESTURE.

POVERTY. A gift which is designed to assist those who “have to go short” may be a good charitable gift for the relief of “poverty”; “poverty” does not mean destitution (*Re Coulthurst* [1951] Ch. 661).

The expression “poverty” in s.53 of the General Rate Act 1967 (c.9) does not apply to a body corporate (*Hummingbird Entertainments v Birmingham City Council* [1991] R.A. 165).

See CHARITY; FORMA PAUPERIS; PAUPER; POOR.

POWER. “‘Power’ does not apply to the sort of interest which the ownership gives” (per Ellenborough C.J., *Roe d. Berkeley v York*, 6 East 107); see further per Fry L.J., *Re Armstrong*, 55 L.J.Q.B. 579, cited PROPERTY.

“A power is an authority reserved by, or limited to, a person to dispose, either wholly or partially, of real or personal property, either for his own benefit or for that of others. The word is used as a technical term, and is distinct from the dominion which a man has over his own estate by virtue of ownership” (Farwell, 1).

As to whether “power” is a word of art meaning “power to appoint”, see *Sykes v Carroll* [1903] 1 I.R. 22.

As to what words will exercise a power, the simple question is whether you can find in the document, which is put forward as exercising it, such an indication to exercise the power as that it ought to be held that the power has been exercised; “it is a question of intention, and a question of intention only” (per Pearson J., *Von Brockdorff v Malcolm*, 30 Ch. D. 172, cited with approval by North J., *Re Cotton*, 40 Ch. D. 41, and by Stirling J., *Re Milner* [1899] 1 Ch. 563, cited ABSOLUTELY); and, “in applying a rule of this kind, little assistance is to be got from decisions on wills differing in form and expression” (per Stirling J., *Re Milner*, above, which case see for numerous cases hereon). See further Farwell (3rd edn), Ch.5; Theobald (10th edn), Ch.2; White & Tudor (9th edn), 249 et seq.; GENERAL POWER; MY; BENEFICIAL; WILL; WRITING; SPECIAL. See also APPOINT; DISPOSING POWER.

Fraud on a power is where a power of appointment, exercised according to the letter of the power, is exercised pursuant to an antecedent bargain that the property shall be held for persons not objects of the power (*Pryor v Pryor*, 33 L.J. Ch. 441). See hereon Farwell (3rd edn), 457; Watson Eq. (2nd edn), *Powers*, Ch. 9. “The term fraud in connection with frauds on a power . . . merely means that the power has been exercised for a purpose or with an intention, beyond the scope of or not justified by the instrument creating the power” (per Lord Parker in *Vatcher v Paull* [1915] A.C. 372, 378; see also *Re Wright* [1920] 1 Ch. 108; *Cochrane v Cochrane* [1922] 2 Ch. 230; *Re Boulton’s Settlement Trust* [1928] Ch. 703).

“Power to appoint” (Wills Act 1837 (c.26) s.27) meant “power to appoint, by the will in question” (*Phillips v Cayley*, 43 Ch. D. 222). See EXPRESSLY REFER; GENERAL POWER.

The word “power” used in the expression “power to appoint or dispose of as he thinks fit” (Finance Act 1894 (c.30) s.22(2)(a)) is used not in its strict legal sense but as meaning “capacity” (*Re Penrose, Penrose v Penrose* [1933] Ch. 793).

"The capacity of releasing a power is not properly described as a power at all" (per Farwell J., *Re Rose* [1904] 2 Ch. 352); therefore, the capacity (Conveyancing Act 1881 (c.41) s.52(1), which declared the then existing law; see Law of Property Act 1925 (c.20) s.155) of a donee of a power to release his power was not a "power in or over or in respect of property", within Bankruptcy Act 1883 (c.52) s.44(ii) (see Bankruptcy Act 1914 (c.59) s.38(2)(b)) and did not belong to a trustee in bankruptcy (*Re Rose* [1904] 2 Ch. 348; see as to that case *Re Rose, Hasluck v Rose*, 74 L.J. Ch. 22; see further *Re Armstrong*, 55 L.J.Q.B. 579, cited PROPERTY). So, the judicial capacity to exercise a lunatic's "power" given by Lunacy Act 1890 (c.5) s.120(l) did not authorise the release of a power (*Re Hirst*, 67 L.T. 702).

Trustees' powers are, prima facie, incident to their office: see *Re Smith, Eastick v Smith* [1904] 1 Ch. 144, cited TRUSTEE.

Power "in the character of trustee or guardian": see CHARACTER. See SALE; *Mansel v Cobham* [1905] 1 Ch. 568, and *Josef v Mulder*, 7 Macph. 64, cited SALE; *Duncan v Ramsay* [1903] A.C. 190, cited DISPOSE OF.

"Additional or larger power", as regards Settled Land Act 1925 (c.18) s.109: see *Westminster's (Duke of) Settled Estates* [1920] 2 Ch. 445, cited ADDITIONAL.

As to the exercise of a testamentary power and how it may be released or restricted, see *Re Evered*, 79 L.J. Ch. 465. As to the court aiding a defective execution of a power, see *Re Walker* [1908] 1 Ch. 560, and cases therein cited; *Re Cooke* [1922] 1 Ch. 292.

Leasing power contrasted with a restriction on granting leases: see *Croft v Lumley*, 6 H.L. Cas. 737; YEAR.

(Housing Act 1936 (c.51) s.156(1)(a).) The power of a local authority to change one tenant for another in accommodation provided by the authority under its statutory powers for the housing of the working classes was a "power under an enactment" within s.156(1)(a), so that the Rent Restrictions Act did not apply (*Shelley v London CC* [1948] 2 All E.R. 898).

"Powers of the vestry of the parish" (Local Government Act 1894 (c.73) s.6(1)(a)) does not include powers with regard to a wake or a fair (*Wyld v Silver* [1963] 1 Q.B. 160).

"Possession, custody or power" (R.S.C. Ord.24 rr.2(1), 3(1)). In order for documents to be in the "power" of a party within the meaning of these rules, that party must either in fact be in possession of them, or have an immediate indefeasible legal right at the time of discovery to demand possession of them from the person in whose possession they are (*Lonhro v Shell Petroleum* [1980] 1 W.L.R. 627). See also POSSESSION.

The documents of an insolvent company were not "in the power of" the Secretary of State of Trade and Industry within the meaning of R.S.C. Ord.24 r.7 so as to entitle a former director of the company, against whom the Secretary of State was seeking a disqualification order to require the Secretary of State to make a further affidavit stating whether specified documents or classes of documents had at any time been in his power (*Re Lombard Shipping and Forwarding* [1992] B.C.C. 700).

"Power to sell any of the company's property by public auction or private contract": an agreement that backers to litigation should receive half the proceeds recovered in the action in return for financing the litigation was a "sale" for the purposes of the Insolvency Act 1986 (c.45) Sch.4 para.6 and was champertous (*Groveswood Holdings v James Capel & Co* [1994] 4 All E.R. 417).

POWER

“Power of appointment”: Stat. Def., Perpetuities and Accumulations Act 1964 (c.55) s.15(2); Children Act 1975 (c.72) Sch.1 para.2(1); Legitimacy Act 1976 (c.31) s.10; Adoption Act 1976 (c.36) s.46.

“Power to postpone a sale”: see Administration of Estates Act 1925 (c.23) s.55; Law of Property Act 1925 (c.20) s.205; Settled Land Act 1925 (c.18) s.117.

“Power if he shall think just”: see JUST.

“Shall hereby have power”: see MAY.

“According to their respective powers”: see FACILITIES.

“Disposing power”: see DISPOSING; BENEFICIAL.

“Powers in anywise enabling”: see ENABLING; IN EXERCISE.

“Necessary powers”: see NECESSARY.

“Power of revocation”: see REVOKE.

“Right, power, or privilege”: see RIGHT.

“Mechanical power”: see MECHANICAL.

See APPOINT; APPOINTED; APPOINTMENT. See further *Read v Nashe*, 1 Leon. 147, cited EXCEPTION.

See POSSESSION OR POWER; POSSESSION, ORDER OR DISPOSITION; USURPED POWER; COMPULSORY POWERS; EXCLUSIVE POWER.

POWER OF APPOINTMENT. Stat. Def., Perpetuities and Accumulations Act 2009 s.20.

POWER OF ATTORNEY. A power of attorney is an authority whereby one “is set in the turne, stead, or place of another” to act for him (see ATTORNEY). It is generally made by deed poll (see POLL), but semble (Wms. P.P., Pt 2, Ch.3), may be by writing unsealed (*Howell v M’Ivers*, 4 T.R. 690), or even by parol (*Heath v Hall*, 4 Taunt. 326). See hereon Law of Property Act 1925 (c.20) ss.123–129; Supreme Court of Judicature (Consolidation) Act 1925 (c.49) s.219; Trustee Act 1925 (c.19) ss.25 and 29.

“Powers of attorney are to be construed strictly—that is to say, where an act purporting to be done under a power of attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that, on a fair construction of the whole instrument, the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication” (*Bryant v Banque du Peuple* [1893] A.C. 177; see further *Attwood v Munnings*, 6 L.J.O.S.K.B. 9; *Harper v Godsell*, L.R. 5 Q.B. 422; *Re Dowson and Jenkins* [1904] 2 Ch. 219, cited BELONGING).

As to whether or not a power of attorney contains an implied power to borrow, see *Jacobs v Morris* [1902] 1 Ch. 816.

It is revocable except when made for due consideration and forms part of a security (*Frith v Frith* [1906] A. C. 254).

For wide form of such a power, especially of power to sell, see *Hawksley v Outram* [1892] 3 Ch. 359.

As to effect of recitals in: see *Danby v Coutts*, 29 Ch. D. 500.

POWER OF ENTRY. (Police and Criminal Evidence Act 1984 (c.60) s.17(6).) The power to enter property to deal with or prevent a breach of the peace was not restricted to places where public meetings were held but could apply to private property (*McLeod v Commissioner of Police of the Metropolis* [1994] 4 All E.R. 553).

Stat. Def., Protection of Freedoms Act 2012 s.46.

POWER OF THE COUNTY. See POSSE.

POWER TO ENJOY. (Income and Corporation Taxes Act 1970 (c.10) s.478(2).) A taxpayer consultant chartered surveyor who had arranged for his fees to be paid to a Jersey company, which employed him, with specific arrangements as to salary, was held still to have the "power to enjoy" the income of the company within the meaning of this section (*IRC v Brackett* [1986] S.T.C. 521).

P.P. As used in a sporting match: see *Daintree v Hutchinson*, 11 L.J. Ex. 186.

See PER PROCURATION.

PPI policy: see HONOUR.

PRACTICABLE. The word "practicable" cannot be construed as meaning "equitable" or "fair" or "reasonable" (see *Re Farquhar* [1943] 2 All E.R. 781).

"All practicable speed": see *Nicholls v Hall*, L.R. 8 C. P. 322.

Notice of accident to be given "as soon as practicable" (Workmen's Compensation Act 1925 (c.84) s.14). A delay of seventeen days was held too much (*Shearer v Miller*, 37 S.L.R. 80). See also *Hayward v Westleigh Colliery Co* [1915] A.C. 540; *Burril v Vickers* [1916] 1 K.B. 180; *Albison v Newroyd Mill Ltd*, 134 L.T. 171; *Day v Bernardes*, 131 L.T. 397; *Lee v Nursery Furnishings Ltd* [1945] 1 All E.R. 387.

"Practicable" (Industrial Tribunals (Industrial Relations, etc.) Regulations 1972 (SI 1972/38) Sch. r.2(1)(a); Industrial Tribunals (Industrial Relations, etc.) Regulations (Scotland) 1972 (SI 1972/39)). In *Westward Circuits v Read* [1973] I.C.R. 301 it was held that in deciding whether it was "practicable" for a complaint to be presented within four weeks within this regulation, account may be taken of when the complainant first knew that he might be entitled to claim compensation. But in *Dewar and Finlay v Glazier* [1973] I.C.R. 527 it was held that the fact that a complainant was ignorant of her rights did not in itself mean that it was not "practicable" to present her claim within the four weeks. "Practicable" meant feasible (*Singh v Post Office* [1973] I.C.R. 437).

"All practicable measures" (Factories Act 1937 (c.67) s.47(1); now Factories Act 1961 (c.24) s.63(1)): regard must be had to the state of knowledge at the time, and particularly to the knowledge of scientific people (*Adsett v K & L Steel-founders and Engineers* [1953] 1 W.L.R. 773). The phrase must be interpreted subjectively, and in relation to such knowledge as an occupier has or ought to have (*Richards v Highway Ironfounders (West Bromwich)* [1957] 1 W.L.R. 781). It imports a higher duty than merely reasonably practicable (*Gregson v Hick Hargreaves & Co* [1955] 1 W.L.R. 1252). "All practicable measures" means precautions which can be taken without practical difficulty (*Brooks v J. & P. Coats* [1984] 1 All E.R. 702). As to the provision of masks and respirators, see *Crookall v Vickers-Armstrong* [1955] 1 W.L.R. 659; *Gregson v Hick Hargreaves & Co*, above; *Balfour v William Beardmore & Co Ltd*, 1956 S.L.T. 205.

"As far as practicable" (Building (Safety, Health and Welfare) Regulations 1948 (No.1145) reg.79(7)) means possible to be accomplished with known means or known resources (*Knight v Demolition and Construction Co* [1953] 1 W.L.R. 981).

"So far as practicable" (Social Security Act 1975 (c.14) s.99(1)). In determining practicability for the purposes of this section regard may be had not only to matters internal to the claim for social security benefit, but also to extrinsic factors (*R. v Secretary of State for Social Services, Ex p. Child Poverty Action Group, The Times*, February 15, 1988).

"As soon as reasonably practicable" (Public Order Act 1986 (c.64) s.39(2)). Where, by virtue of their powers under this section, the police directed squatters to leave

premises occupied by them, the requirement to do so “as soon as reasonably practicable” related only to the practicability of moving out (*Krumpa v DPP* [1989] Crim.L.R. 295).

“Not practicable to communicate” (Police and Criminal Evidence Act 1984 (c.60) Sch.1 para.14(a)). “Practicable” is to be construed as wider than just “feasible” or “physically possible” (*R. v Leeds Crown Court, Ex p. Switalski* [1991] Crim.L.R. 559).

Where the drafter of a statute uses “practicable” rather than “reasonably practicable”, he is taken to intend a stricter requirement (*Nikonos v Governor of Brixton Prison* [2005] EWHC Admin 2405 at [21]).

“As soon as practicable”: see AS SOON AS.

Stat. Def., Clean Air Act 1956 (c.54) s.34(1).

“Collins J said that the word ‘practicable’ must be interpreted in its context and should not be equated with possible. He referred to a decision of Bennett J in *R(E) v Bristol City Council* [2005] EWHC 74 (Admin) and said: ‘In Bennett J’s view, with which I entirely agree, practicality should be approached on the basis that the patient’s interests are to be considered. A judgment has to be made, but it must always be borne in mind that one of the doctors who is concerned with recommending compulsory admission should have had previous acquaintance with the patient. Thus only if it is considered on reasonable grounds to be appropriate in given circumstances for doctors who have not had previous acquaintance to decide whether to recommend admission should such a course be adopted.’... The Concise Oxford Dictionary defines ‘practicable’ as meaning ‘that can be done or used; possible in practice’, but to give the word that definition in the context of s.12(2) could produce surprising results. In the present case it would not have been possible to obtain a written recommendation from Dr Chatterjee satisfying the requirements of s.3(3), because it was not his opinion that M needed to be sectioned. If Dr Malik had been of the same view as Dr Chatterjee, paradoxically the result would seem to be that the application would then have complied with s.12(2) (because it would not have been possible to obtain a recommendation satisfying s.3(3) from either of the practitioners who had previous acquaintance with M); but because Dr Malik did think that M needed to be sectioned (a view with which the two independent consultants both agreed), on M’s argument the application based on the recommendations of the consultants brought in to make a fresh assessment was invalid. I do not think that it would be wise for the court to attempt to give a comprehensive definition of the word ‘practicable’ in the present context. However, Parliament must have foreseen that decisions about making applications for admission under s.3 may have to be made in circumstances of urgency. And it must have intended that the professionals involved in the process would discharge their responsibilities in a professional way with proper regard for the interests of the patient and of society. The word ‘practicable’ must have sufficient elasticity to accommodate these considerations, consistently with the intention of Parliament.” (*TTM v London Borough of Hackney* [2011] EWCA Civ 4.)

“In my judgment, it was not ‘practicable’ (within the meaning of section 15(6)(b)) to specify the items within the computers and mobile telephones to which the search under section 8 Police and Criminal Evidence Act 1984 related. As Simon J observed in *Glenn* at [63]:

‘the question of where the balance lines in an individual case will not be answered by reference to authority, since each case is likely to turn on particular facts. It will be answered by considering whether the warrant has identified the articles sought “so far as practicable” in the circumstances.’

It was not feasible to provide greater specificity in this case, and it was unrealistic to expect the officers to take away any relevant material from a computer (or other storage device) in paper form or on memory sticks. Furthermore, for the reasons set out above, I am unable to accept Mr Jones’s contention that it is impermissible to order the seizure of electronic storage devices or their contents in circumstances such as these without invoking ss.19 or 20 of the Police and Criminal Evidence Act 1984 or s.50 Criminal Justice and Police Act 2001, and the protections provided thereunder. Finally, I reject the submission that the expression ‘cash representing the proceeds of criminal activity’ failed to identify, so far as is practicable, the articles sought or that it should only have been seized under the powers contained in s.19(2) Police and Criminal Evidence Act 1984.” (*Cabot Global Ltd v Barkingside Magistrates’ Court* [2015] EWHC 1458 (Admin).)

See CORRESPOND; REASONABLY PRACTICABLE; WORKABLE; WORTH THE EXPENSE; IMPRACTICABLE; SAFE.

PRACTICAL. A man who has been a working miner, but who was, and for eight years had been, employed above ground as a check-weigher, was not a “practical working miner”, within r.38 s.49 of the Coal Mines Regulation Act 1887 (c.58) (*Indian v Colquhoun*, *The Times*, January 18, 1890).

A bequest for the benefit of “persons who have shown practical sympathy either as amateurs or professionals in the pursuits of science” is a good charity: as to the meaning of “practical sympathy”, see *Weir v Crum Brown* [1908] A.C. 162.

“Practical instruction”: see Education Act 1921 (c.51) s.170.

“Able, practical, surveyor or valuer”: see SURVEYOR.

“Practical benefits of substantial value or advantage”: see SUBSTANTIAL.

“Practical importance” (Equal Pay Act 1970 (c.41) s.1(4)): see DIFFERENCE.

PRACTICALLY. See PRACTICABLE.

Quarter Sessions “next practically possible”: see NEXT.

PRACTICE. “Practice”, in its larger sense, is like “procedure”, and “denotes the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right” (per Lush L.J., *Poyser v Minors*, 7 Q.B.D. 333).

The “practice” of a court, when that word is used in its ordinary and common sense, denotes the rules that make or guide the *cursus curiae*, and regulate procedure within the walls or limits of the court itself, and does not involve or imply anything relating to the extent or nature of its jurisdiction; and, therefore, the Queen’s Remembrancer Act 1859 (c.21) s.26, enabling the now abolished Barons of the Exchequer to frame rules for making “the process, practice, and mode of pleading” on the revenue side of the court uniform with that on the plea side, did not give those learned judges the power they assumed to exercise of giving an appeal in Revenue cases (*Att-Gen v Sillem*, 10 H.L. Cas. 704).

A chamber summons to review taxation was a matter of “practice and procedure” within s.1(4) of the Judicature Act 1894 (c.16), and the old R.S.C. Ord.54 r.23 (*Re Oddy* [1895] 1 Q.B. 392); so was a summons for an interim injunction, even though the action itself was for an injunction (*McHarg v Universal Stock Exchange* [1895] 2 Q.B. 81); so of an application to set aside an ex parte order to serve writ out of the

jurisdiction (*Black v Dawson* [1895] 1 Q.B. 848), or for an order to strike out or stay under Ord.25 (*Price v Phillips*, 11 T.L.R. 86; *Hind v Hartington*, 6 T.L.R. 267), or for transfer to commercial list (*Sea Insurance v Carr* [1901] 1 K.B. 7), or an application to enforce the award of an arbitrator under Arbitration Act 1889 (c.49) s.12 (see *Re Colman and Watson* [1908] 1 K.B. 47) (see now Arbitration Act 1950 (c.27) s.26), or for leave to revoke appointment of an arbitrator (*Re Portland and Tilley* [1896] 2 Q.B. 98), or for appointment of a receiver (*Hood-Barrs v Cathcart*, 11 T.L.R. 262), or a garnishee order (*Hockley v Ansah*, 44 W.R. 666), or for judgment under R.S.C. Ord.14 (*Cannon Brewery Co v Gilby*, 75 L.T. 407). So, semble, of a summons to take out execution (*Wilson v Parker*, 39 S.J. 180); but a prohibition to a county court was not within the section (*Watson v Petts* [1899] 1 Q.B. 54; *Morton v Emanuel*, 43 S.J. 97). See hereon *Hood-Barrs v Cathcart* [1895] 1 Q.B. 597 fn. A refusal to take a petition off the file was not within the section (*Pope v Bruton*, 17 T.L.R. 182), nor was an order, under Regulation of Railways Act 1868 (c.119), s.41, to try in the High Court a question of compensation (*Long v Great Northern & City Railway* [1902] 1 K.B. 813), nor was an order to an arbitrator to state a special case (*Re Frere and North Shore Mill Co* [1905] 1 K.B. 366), nor was an order on an originating summons directing a solicitor to pay money pursuant to his undertaking (see *Re Marchant* [1908] 1 K.B. 998), nor an order by a judge at chambers giving leave to issue a writ of attachment against a solicitor on the ground that he had not complied with an order for the payment of costs which he had been personally ordered to pay (see *Haxby v Wood Advertising Agency*, 109 L.T. 946), nor a summons taken out at chambers to set aside an agreement relating to the payment for a solicitor's services (see *Re Jackson* [1915] 1 K.B. 371; see further *Yonge v Toynbee* [1910] 1 K.B. 215). An order for committal is a matter of "practice or procedure" (*Lever Bros Ltd v Kneale & Bagnall* [1937] 2 K.B. 87).

An appeal from a judge at chambers refusing leave to revoke a submission to arbitration was in a matter of "practice and procedure", and therefore lay to the Court of Appeal and not to a Divisional Court: see *Simbro Trading Co Ltd v Posograph Corp Ltd* [1929] 2 K.B. 266; see further *Miller, Gibb & Co v Smith* [1916] 1 K.B. 419; *Richardsons v Bernhard* [1925] 2 K.B. 121.

R.S.C. old Ord.22 r.7, which forbids communicating to a jury that money has been paid into court, is one of practice and procedure (*Williams v Goose* [1897] 1 Q.B. 471).

To constitute a "custom or practice" which could authorise a municipal corporation to make a renewal of a lease (Municipal Corporations (England) Act 1835 (c.76) s.95), "there must be such a number of preceding leases of such a similar and uniform character as to amount, though not to a legal custom yet, to that which is ordinary and common parlance and by persons not acquainted with the technical import of legal expressions would be called a 'custom', to which the word 'practise' is synonymous" (per Romilly M.R., *Att-Gen v Yarmouth*, 25 L.T.O.S. 5).

Bonus, etc. by directors of an insurance company, "according to their practice for the time being": see *British Equitable Assurance v Bailey* [1906] A.C. 35.

(Supreme Court Act 1981 (c.54) s.84(1) and (2).) For the purposes of s.84(1) and (2), costs were a matter of practice and procedure so that the provisions of R.S.C. Ord.62 r.18(3) were not ultra vires but were reasonable provisions defining and regulating the rights of a litigant in person to recover costs (*Mainwaring v Goldtech Investments Ltd* [1997] 1 All E.R. 467).

“Practices”: see PRETENCE.

“Put in practice”, a patent: see USE.

Stat. Def., Fair Trading Act 1973 (c.41) s.137.

See PRACTISE; ALREADY; CORRUPT PRACTICE.

PRACTICE (IN CONTEXT OF SOLICITORS). “The key to the matter, to my mind, is to understand what is meant by the expression ‘practice’? Mr Dutton submitted, and I agree, that it means the activities of the solicitor or authorised body so far as carried out in that capacity. It is in contrast to the named organisation or structure (for example, Lillywhite Williams & Co or Lillywhite Williams LLP) through which the members of the organisation practise. This explains why an intervention can be, as the interventions were in the instant case, into the LLP and also into the practices of Mr Lillywhite and Mr Williams. The latter two did not practise separately from the LLP (or for that matter from the Partnership while it lasted) but as members of it. But each nonetheless had a practice within the LLP in the sense that he carried on the activities of a solicitor. That this is the correct way to understand what is meant by ‘practice’ is supported by the definition of ‘practice’ as it appears in the Glossary to the SRA Code 2011. Paragraph 1.1 of the 2011 Rules refers in terms to the Glossary for the meaning of terms used in those rules. The Glossary defines ‘practice’ as ‘...the activities, in that capacity, of: (i) a solicitor...’ What then was the practice or former practice of Mr Williams and Mr Lillywhite? It included their practices while partners of the Partnership in that those practices, namely the activities which they had carried on as solicitors while members of that entity, were on any view their respective former practices. I am also of the view that the practice of the LLP included the practice previously carried on by the Partnership. This is because, as the evidence amply demonstrated, that practice, namely the activities carried on in the name of the Partnership by its members and other staff, did not suddenly come to an end at the close of business on 31 January 2014. Those activities were continued the next day, exactly as before but thenceforth for the benefit and (save as to the legally-aided work) in the name of the LLP into which, when it ceased to be recognised by the SRA, the Partnership had converted.” (*Williams v The Law Society of England And Wales (Solicitors Regulation Authority (SRA))* [2015] EWHC 2302 (Ch).)

PRACTICE DIRECTION. Judgments are not practice directions for the purposes of s.5 of the Civil Procedure Act 1997 (*Bovale Ltd v Secretary of State for Communities and Local Government* [2009] EWCA Civ 171).

PRACTISE. To “act or practise” as an apothecary without a certificate within the prohibition of Apothecaries Act 1815 (c.194) s.20, has relation to an habitual or continuous course of conduct; therefore, where an uncertified person gave advice and supplied medicine to three different persons at different times, he was guilty of one offence, not three, and was liable to only one penalty (*Apothecaries Co v Jones* [1893] 1 Q.B. 89).

A man practises as an apothecary and, if registered, is entitled to recover his charges for medical aid and medicine (Apothecaries Act 1815 (c.194) s.21; Medical Act 1858 (c.90) ss.31 and 32), if his is the directing brain, though the ministering hand be that of an unqualified person (*Howarth v Brearley*, 19 Q.B.D. 303). An assistant to another, though doing the work of an apothecary, was not “in practise as an apothecary” within Apothecaries Act 1815 (c.194) s.21 (*Brown v Robinson*, 1 C. & P. 264).

A solicitor, who held a country certificate and whose office was in the country, did not “act or practise” in London (Stamp Act 1870 (c.97) s.59; Stamp Act 1891 (c.39)

PRACTITIONER

s.43) by attending one taxation at the central office (*Re Horton*, 8 Q.B.D. 434). Cp. *Edmondson v Render* [1905] 2 Ch. 320; *Woodbridge v Bellamy* [1911] 1 Ch. 326; and *Freeman v Fox*, 55 S.J. 650, cited ACT; SOLICITOR. See also *Way v Bishop* [1928] 1 Ch. 647.

As regards Justices Qualification Act 1871 (c.18), a solicitor "shall be deemed to practise and carry on his profession or business in the county, city, or town, in which he maintains an office, or place of business" (s.2): see thereon *R. v Douglas* [1898] 1 Q.B. 560. On the other hand, a solicitor who regularly practised at a petty sessions or county court, "exercises, practises, or carries on" his business there, although he received his instructions elsewhere (*Llewellyn v Simpson*, 91 L.T. 9).

To "practise" as a surgeon: see *Rawlinson v Clarke*, 14 L.J. Ex. 364. See further *Robertson v Buchanan*, 90 L.T. 390, cited SET UP.

Where a veterinary surgeon had his regular and usual place of business outside a restricted area but occasionally attended cases within that area, such attendances being entirely unsolicited on his part and only made after an assurance by the customer that he would not be damaging his covenantee who would not in any case be called in; held, not a breach of a covenant not to "practise, carry on, or be engaged or interested in, the business of a veterinary surgeon", within the restricted area (*Sewell v Wright*, 50 S.J. 223); but see per Williams L.J., *Robertson v Buchanan*, above.

A covenant not to practise a profession is broken by acting as manager to a practising member of that profession: see *Robertson v Wilmot*, 53 S.J. 631. See also CARRY ON; cp. *Gophir Diamond Co v Wood* [1902] 1 Ch. 950, cited SET UP.

A "practising barrister" is a member of the Bar who is entitled to practise and who holds himself out as ready to do so: Annual Statement of the General Council of the Bar 1932, p.9.

Assuming title of a "veterinary practitioner": see VETERINARY; QUALIFIED.

See CARRY ON.

PRACTITIONER. "General medical practitioner" excludes a consultant: see *Routh v Jones* [1947] 1 All E.R. 758.

Stat. Def., Medicines Act 1968 (c.67) s.132; Misuse of Drugs Act 1971 (c.38) s.37.

See MEDICAL; QUALIFIED; VETERINARY.

PRÆDIAL TITHES. See TITHES.

PRÆMUNIRE. This offence was "where any man sueth any other in the Spiritual Court for anything that is determinable in the Kings Court" (*Termes de la Ley*); and the statutes of Præmunire were to repress the civil power of the Pope. For those statutes, and hereon, see Jacob; 4 Bl. Com., Ch. 8; *Martin v Mackonochie*, L.R. 2 A. & E. 150-155; *Middleton v Crofts*, 2 Atk. 669; Phil. Ecc. Law, 1108.

PRATA. "'Pratum falcabile', a meadow or ground fit for mowing" (Cowel).

See MEADOWS.

PRAYER. "What is prayer? Barrow says it is not only supplication, but adoration" (per Byles J., *Baxter v Langley*, 38 L.J.M.C. 5).

So, though "bequests for prayers for the soul of the testator are void as superstitious" (Tudor's Char. Trusts (3rd edn), 23, and cases there cited; yet, semble, a bequest to say prayers for the living, or to offer thanksgiving for the dead in the sense at the end of the prayer for the church militant on the book of common prayer, would be good (*Re Michel*, 29 L.J. Ch. 547). See further 10 Encyc. 289, 290. Tudor's Char. Trusts (5th edn), 19-22.

"Open prayer": see OPEN.

See PRECATORY TRUST.

PRE-EMPTION. When used in a Parliamentary context, the term “pre-emption” can refer to the practice which prevents the Question being put on an amendment if it is rendered ineffective by a previous amendment which is carried (for example, because the later amendment operates on words which are removed by the preempting amendment).

“Right of pre-emption”: see SUPERFLUOUS LAND; FIRST REFUSAL; OPTION.

PRE-PACKED. (Weights and Measures Act 1963 (c.31) s.58.) Exposing pieces of meat on the pieces of paper in which they will be wrapped does not make them “pre-packed” within the meaning of this section (*Lucas v Rushby* [1966] 1 W.L.R. 814).

Stat. Def., Weights and Measures Act 1985 (c.72) s.94.

PREACHER. See GODLY PREACHER.

PREACHING. See MINISTRATION; IN PUBLIC.

As to preaching on the seashore, see *Llandudno v Woods* [1899] 2 Ch. 705, cited FORESHORE.

PREAMBLE. The preamble of a statute “is a key to open the minds of the makers of the Act, and the mischiefs which they intend to remedy by the same” (*Termes de la Ley*). See hereon *Sussex Peerage Case*, 11 Cl. & F. 143; per Lord Blackburn, *West Ham v Iles*, 8 App. Cas. 388. See also *Craies on Statute Law* (5th edn), 186–192.

PREBEND. “Prebend” signifies the office which a prebendary holds, and also his stipend, which stipend “is an endowment in land, or pension in money, given to a cathedral or conventual church in *præbendam*” (Phil. Ecc. Law, 138).

A “prebendary” is the holder of a prebend, and is a secular priest or regular canon, and is either a simple prebendary or a dignitary prebendary—simple, when he has no jurisdiction; dignitary, when he has a prescriptive jurisdiction (Phil. Ecc. Law, 138).

“Net profits” of a prebend: see NET.

PRECARIÆ. *Precariæ*, or benework, or boonwork, is “special work done by a tenant at the request of his lord, as distinguished from fixed services (Seebohm, 78; Spelm. Gloss. s.v.). *Precariæ siccae* are ‘boon days without allowance of drink’; Domesday of St. Paul’s (Cam. Soc.), notes, p. cxxiv. *Precariæ* is also used in the senses of benefices (feuds); 2 Palgr. Eng. Commonwealth, p. ccv” (Elph. 616, 563). In the first of these senses, Cowel gives the definition thus, “‘*precariæ*’ are dayes-works, which the tenants of some mannors are bound, by reason of their tenure, to do for the lord in harvest”.

PRECARIO. “What is ‘precarious’?—that which depends not on right, but on the will of another person. As Bracton (lib. iii, fo. 221, A) puts it: ‘*Si autem [seisina] precario fuerit et de gratia, quæ tempestive revocari possit et intempestive, ex longo tempore non acquiritur jus*’. That is to say, if a servient owner can ‘*tempestive*’ or ‘*intempestive*’—whether the dominant owner likes it, or whether he does not—put a stop to the easement there is really no easement, because the very idea of right, which necessarily underlines an easement, is negatived” (per Farwell J., *Burrows v Lang* [1901] 2 Ch. 511). See also per Jenkins L.J., in *Wright v Macadam* [1949] 2 K.B. 744, 750, 751.

“Precarious possession” is possession simply at will: see *Lowe v Gardiner* [1921] S.C. 211.

See VI, CLAM, PRECARIO.

PRECATORY TRUST. "It has long been settled that words of recommendation, request, entreaty, wish, or expectation, addressed to a devisee or legatee, will make him a trustee for the person or persons in whose favour such expressions are used" (2 Jarm. (8th edn), 866, 867). See also Lewin (15th edn), 80 et seq.; but "it is essential that there should be (1) a certain subject, and (2) a certain object of the trust to be so created" (per Wood V.C., *Bernard v Minshull*, Johns. 285, 286; 28 L.J. Ch. 649); see that case for an explanation as to these two essential certainties. See also *Knight v Knight*, 9 L.J. Ch. 354, for a full discussion of this doctrine before and by Langdale M.R. *Knight v Knight* was affirmed in House of Lords, sub nom. *Knight v Boughton*, 11 Cl. & F. 513, on which see per Williams L.J., *Re Old-field* [1904] 1 Ch. 549; and per Cozens-Hardy M.R., and Buckley L.J., in *Re Atkinson*, 80 L.J. Ch. 370; see also *Re Green* [1935] W.N. 151; *Re Hill* [1923] 2 Ch. 259. See further *Cowman v Harrison*, 22 L.J. Ch. 993.

"The words 'precatory trust' are an abominable phrase. They are used as a roundabout way of saying that the court finds that there is a trust although the trust is not expressed, as such, but by words of prayer or suggestion, or the like" (per Chitty J., *Re Sanson*, 12 T.L.R. 142). "The doctrine of thus construing expressions of recommendation, confidence, hope, wish, and desire, into positive and peremptory commands, is not a little difficult to be maintained, upon sound principles of interpretation of the actual intention of the testator". "Accordingly we find, of late, a more strict and uniform requisition of definiteness, in regard to both the subject-matter and the objects of the intended trust than can be traced in some of the earlier, and a few of the more modern, adjudications" (2 Jarm. (8th edn), 873); and the strong disposition now is "to give to the words of wills their natural and ordinary sense, unless it is clear that they are designed to be used in a peremptory sense" (Story, s.1(6)). See further per Cotton L.J., *Re Adams and Kensington*, 27 Ch. D. 410, cited by North J., *Cochrane v Dundonald*, 10 T.L.R. 262; per Rigby L.J., *Re Williams* [1897] 2 Ch. 27 et seq.

Each of the following phrases in wills has been held to create a precatory trust:

"Advise him to settle" (*Parker v Bolton*, 5 L.J. Ch. 98);

"Well assured" (*Macey v Shurmer*, 1 Amb. 520; see *Ray v Adams*, 3 My. & K. 237);

"Have full assurance and confident hope" (*Macnab v Whitbread*, 17 Bea. 299);

"Authorise and empower" (*Brown v Higgs*, 4 Ves. 708; 5 Ves. 495; 8 Ves. 561; 18 Ves. 192; see further *Griffiths v Evan*, 11 L.J. Ch. 219). But see as to non-mandatory meaning of "empower", *Bull v Vardy*, 1 Ves. 270, explained by *Re Brierley*, 43 W.R. 36; *Coxe v Bassett*, 3 Ves. 164;

"Beg" (*Corbet v Corbet*, I.R. 7 Eq. 456; but see *Green v Marsden*, 1 W.R. 511);

"In the full belief" (*Fordham v Speight* [1875] W.N. 140);

"Most heartily beseech" (*Meredith v Heneage*, 1 Sim. 553);

"Confide" (*Griffiths v Evan*, 11 L.J. Ch. 219; see further *Shepherd v Nottige*, 2 J. & H. 766);

"Have the fullest confidence" (*Shovelton v Shovelton*, 32 Bea. 143; *Re Downing*, 60 L.T. 140; *Wright v Atkyns*, 17 Ves. 255; 19 Ves. 299; *Webb v Wools*, 21 L.J. Ch. 625; *Palmer v Simmonds*, 2 Drew. 225; *Curnick v Tucker*, L.R. 17 Eq. 320; *Le Marchant v Le Marchant*, L.R. 18 Eq. 414). *Secus*, where the words expressing "confidence" are preceded by an absolute gift (*Meredith v Heneage*, 1 Sim. 542; *Re Adams and Kensington*, 24 Ch. D. 199; 27 Ch. D. 394; see also *Lambe v Eames*, 6 Ch. 597; *Re Hutchinson and Tennant*, 8 Ch. D. 540; *Re Hamilton* [1895] 2 Ch. 370; *Re Williams*

[1897] 2 Ch. 12; *Mussoorie Bank v Raynor*, below). See further *Re Hanbury* [1904] 1 Ch. 415; reversed in House of Lords, sub nom. *Comiskey v Bowring-Hanbury* [1905] A.C. 84;

"In consideration the legatee has promised to give" (*Clifton v Lombe*, 1 Amb. 519);

"Under the firm conviction" (*Barnes v Grant*, 26 L.J. Ch. 92);

"Of course the legatee will give" (*Robinson v Smith*, 6 Mad. 194; but see *Lechmere v Lavie*, 2 My. & K. 198);

"Desire" (*Harding v Glyn*, 1 Atk. 469; *Mason v Limbury*, cited *Vernon v Vernon*, Amb. 4; *Trott v Vernon*, 2 Vern. 708; *Pushman v Filliter*, 3 Ves. 7; *Brest v Offley*, 1 Ch. Rep. 246; *Bonser v Kinnear*, 2 Giff. 195; *Cary v Cary*, 2 Sch. Lef. 189; *Cruwys v Colman*, 9 Ves. 319; see, on the contrary, *Shaw v Lawless*, 5 Cl. & F. 129; *Re Diggles*, 32 S.J. 608, where "desire" follows an absolute gift there will be no trust; *Re Sanson*, above; *Re Old-field*, above; *Re Conolly* [1910] 1 Ch. 219, where the words were "specially desire"; see also "have the fullest confidence", *Re Hill* [1923] 2 Ch. 259). But "I particularly desire" in *Re Green* [1935] W.N. 151, did not create a precatory trust;

"Direct": see "Order and direct", below;

"Do not doubt" (*Parsons v Baker*, 18 Ves. 476; *Taylor v George*, 2 V. & B. 378; *Malone v O'Connor*, L. & G. t. Plunk. 564; see also *Sale v Moore*, below);

"Empower": see "Authorise and empower", above;

"Entreat" (*Prevost v Clarke*, 2 Mad. 458; *Meredith v Heneage*, 1 Sim. 553, 555; see further *Taylor v George*, 2 V. & B. 378);

"Hope" (*Harland v Trigg*, 1 Bro. C.C. 142; see further *Paul v Compton*, 8 Ves. 380; "Assurance and hope", above). But see *Eaton v Watts*, L.R. 4 Eq. 151;

"Well know" (*Bardswell v Bardswell*, 7 L.J. Ch. 268; *Nowlan v Nelligan*, 1 Bro. C.C. 489; *Briggs v Penny*, 21 L.J. Ch. 265; but see as to that latter case, *Stead v Mellor*, 5 Ch. D. 225; *Clancarty v Clancarty*, 31 L.R. Ir. 530). Cp. *Greene v Greene*, below;

"Order and direct" (*Cary v Cary*, 2 Sch. & Lef. 189);

"Provide": see "Take care of and provide", below;

"Recommend" (*Tibbits v Tibbits*, Jac. 317; 19 Ves. 656; *Horwood v West*, 1 L.J.O.S. Ch. 201; *Paul v Compton*, 8 Ves. 380; *Malim v Keighley*, 2 Ves. 333, 529; *Malim v Barker*, 3 Ves. 150; *Meredith v Heneage*, 1 Sim. 553; *Kingston v Lorton*, 2 Hog. 166; *Cholmondeley v Cholmondeley*, 14 Sim. 590; *Hart v Tribe*, 23 L.J. Ch. 462; *White v Briggs*, 15 L.J. Ch. 182). "That 'recommend' may amount to a command and create a binding trust is certain. It is equally certain that the word is susceptible of a different interpretation. It must depend upon the language of the particular instrument in which this word is found, in which of the two senses it is to be taken" (per Knight Bruce V.C., *Johnson v Rowlands*, 17 L.J. Ch. 438). See hereon *Re Hamilton* [1895] 2 Ch. 370;

"Request" (*Pierson v Garnet*, 2 Bro. C.C. 38; *Eade v Eade*, 5 Mad. 118; *Moriarty v Martin*, 3 Ir. Ch. Rep. 26; *Bernard v Minshull*, 28 L.J. Ch. 649; see also *House v House* [1874] W.N. 189); but see, *per contra*, *Hill v Hill* [1897] 1 Q.B. 483, in which case Esher M.R. said, "a request, in its ordinary meaning, is nothing but a request; it does not impose an obligation, although there may be cases in which, under special circumstances, an obligation must be implied from a request"; see further *Cochrane v Dundonald*, 10 T.L.R. 262, where the words "requiring him to advise and assist his

PRECEDENT

brothers, as I have done", were held by North J., as insufficient to create a trust. See also *Re Johnson* [1939] 2 All E.R. 458; *Re Steele's Will Trusts* [1948] Ch. 103;

"Take care of and provide" (*Broad v Bevan*, 1 Russ. 511 fn; but see as to that case, *Abraham v Alman*, 1 Russ. 509, and *Re Moore*, below);

"Trusting" (*Irvine v Sullivan*, L.R. 8 Eq. 673); but see *Curtis v Rippon*, 5 Mad. 434;

"Trusting and confiding" (*Wade or Wood v Cox*, 5 L.J. Ch. 361; 6 L.J. Ch. 366; *Pilkington v Boughey*, 12 Sim. 114);

"Well know": see "Know", above;

"Will" (*Eales v England*, Pr. Ch. 200; *Cloudsley v Pelham*, 1 Vern. 411);

"Will and desire" (*Birch v Wade*, 3 V. & B. 198; *Forbes v Ball*, 3 Mer. 437; but see as to that case, per Romer J., *Re Weekes* [1897] 1 Ch. 296). See further *Re Hall* [1899] 1 I.R. 308;

"Wish": see *Re Burley* [1910] 1 Ch. 215;

"Wish and desire" (*Liddard v Liddard*, 29 L.J. Ch. 619). But see *Stead v Mellor*, below; *Re Hamilton*, above. See also *Re Hammer*, 55 S.J. 537, where "earnest wish and desire" created no precatory trust;

"Wish and request" (*Foley v Parry*, 5 Sim. 138; *Re Hutchings* [1887] W.N. 217).

But any of the foregoing (or such like) phrases might easily be controlled the other way by a context; for there is probably no construction more dependent on, or more easily liable to be affected by, the general tenor of the instrument than one from which a precatory trust is to be gathered. "I fully agree with Lord Justice James in what he said in *Lambe v Eames* (6 Ch. 597), that when you come to read the older authorities you can only arrive at the conclusion that they created trusts in numbers of cases where trusts were never intended" (per Pearson J., *Re Adams and Kensington*, 24 Ch. D. 199; see further per Cotton L.J., *Re Adams and Kensington*, 27 Ch. D. 410, and per Lindley L.J., *Re Hamilton*, above, "Recommend").

Words of entreaty when coupled with discretionary words (*Curtis v Rippon*, 5 Med. 434; *White v Briggs*, 15 L.J. Ch. 182; *Williams v Williams*, 20 L.J. Ch. 280; 22 L.J. Ch. 639; *Hart v Tribe*, 23 L.J. Ch. 462; *Eaton v Watts*, L.R. 4 Eq. 151; *Re Bond*, *Cole v Hawes*, 4 Ch. D. 238; *Lambe v Eames*, 6 Ch. 597), or with an absolute gift (*Green v Marsden*, 1 W.R. 511; *Re Adams and Kensington*, above; *Re Moore*, 55 L.J. Ch. 418), do not create a precatory trust. In the case lastly cited the words were, "they are hereby enjoined to take care of my nephew J.J.N.C. as may seem best in the future". So "feeling confident that she will act justly" does not create a precatory trust (*Mussoorie Bank v Raynor*, 7 App. Cas. 321); nor do the words, "to do justice to those relations as she shall think worthy of remuneration" (*Re Bond*, above; see further *Knight v Knight*, above; *Ellis v Ellis*, 44 L.J. Ch. 225), nor "well knowing her sense of justice and love to her family" (*Greene v Geene*, I.R. 3 Eq. 90), nor "not doubting but that she will consider my near relations" (*Sale v Moore*, 1 Sim. 534), nor a desire that the fund will be distributed "agreeably to my wishes" (*Stead v Mellor*, 5 Ch. D. 225). See further DISPOSAL.

The doctrine of precatory trusts, though usually arising on wills, is applicable to transaction inter vivos (*Liddard v Liddard*, 29 L.J. Ch. 619; *Wheeler v Smith*, 29 L.J. Ch. 194), but those cases were not cited when Chitty L.J. said, "It is on wills only, so far as I am aware, that these questions of precatory trusts have been raised" (*Hill v Hill*, 66 L.J. Ch. 335).

PRECEDENT. See CONDITION.

PRECEDING. See PREMISES.

PRECEDING TWELVE MONTHS. As to this phrase in Valuation (Metropolis) Act 1869 (c.67) s.46, see *R. v East & West India Docks Co*, 13 Q.B.D. 364.

The rate, on a brine pumper, on brine pumped or raised by it "during the preceding twelve months" (Brine Pumping (Compensation for Subsidence) Act 1891 (c.40) s.38) means during the twelve months next preceding the making of the rate (*Salt Union v Northwich Compensation Board*, 42 S.J. 328).

PRECINCTS. "Place situate within the close, curtilage, or precincts, forming a factory or workshop" (Factory and Workshop Act 1901 (c.22) s.149(4)): see *Lewis v Gilbertson*, 68 J.P. 323, cited *PLACE*; *Chatburn v Manchester Dry Dock Co*, 83 Ll. L.R. 1.

"Precincts" of a harbour: see *Fisherrow Harbour Commissioners v Musselburgh Real Estate Co*, 43 S.L.R. 110, cited *FORESHORE*.

PRECIOUS. Stat. Def., "means gold or silver" (Treasure Act 1996 (c.24) s.3(1)).

"Precious metal": Stat. Def., Hallmarking Act 1973 (c.43) s.22; Finance (No.2) Act 1975 (c.45) Sch.7.

"Precious stones": Stat. Def., Finance (No.2) Act 1975 (c.45) Sch.7.

See *METAL*; *GOLD*; *SILVER*; *MINE*.

PREDECEASE. To "predecease" a person is to die in his lifetime; therefore, where a testator left property to his daughter for life, remainder to her issue; but directed that she should have it absolutely if her husband "predeceased" her, it was held that she did not become absolutely entitled on obtaining a divorce (*Taylor's Trustees v Barnett*, 31 S.L.R. 11); "if 'predecease' were to be read as meaning 'divorce' or 'termination of marriage', we would not be giving effect to the expressed will of the testator but making a different will for him" (per Lord Trayner, *Taylor's Trustees*; but see per Lord Young). See hereon per Lord Adam, *Neville v Shepherd*, 33 S.L.R. 251.

If any of a CLASS "shall predecease me" leaving children: see *Re Gorrings* [1906] 2 Ch. 341, cited *SHALL*.

See *ISSUE OF THE PREDECEASER*.

PREDECESSOR. "Predecessor in title" (Landlord and Tenant Act 1927 (c.36) s.25, as amended by Landlord and Tenant Act 1954 (c.56) s.47(5)). A sub-tenant is not the predecessor in title of his tenant who has resumed possession of the premises sub-let under an arrangement for determining the sub-tenancy (*Williams v Viscount Portman* [1951] 2 K.B. 948). See also *Williams v Portman* [1951] 2 K.B. 948; which was followed in *Pasmore v Whitbread & Co* [1953] 2 Q.B. 226; *Corsini v Montague Burton* [1953] 2 Q.B. 126.

Sub-tenants who made considerable improvements to business premises in use as a coffee bar were held to be "predecessors in title" of their assignees of the sub-lease, notwithstanding that, at the time of the termination of the tenancy, the assignees had also acquired the title to the head lease as assignees of the original tenant (*Pelosi v Newcastle Arms Brewery* [1981] 259 E.G. 247).

In relation to a tenant that expression means predecessor in title to the property, the legal interest which the tenant holds, and not predecessor to the tenant's business (*Passmore v Whitbread* [1953] 2 Q.B. 226).

"Improvement carried out... by the tenant... or any predecessor in title of his" (Rent Act 1977 (c.42) s.70(3)(b)). A tenant who made considerable improvements to a property before the landlords granted him the lease was held not to be his own "predecessor in title" for the purposes of this section (*The Trustees of Henry Smith's Charity v Hemmings* (1983) 265 E.G. 383).

PREDIAL TITHES. See TITHES.

PREDOMINANTLY. “It is important in resolving this case to know what is meant by the word ‘predominantly’, as it was used by Lord Hoffmann in the Sunningwell and Oxfordshire cases. I have assumed that the word carries its Oxford English Dictionary definition, described as being in later use, of: ‘primarily, largely, chiefly, for the most part’”—(*Paddico (267) Ltd v Kirklees Metropolitan Council* [2011] EWHC 1606 (Ch)).

PREFERENCE. As to what words, in the memorandum of association of a company, will authorise the issue of new preference shares so as to rank *pari passu* with the original issue of preference shares which entitle the holders to “a fixed cumulative dividend”, see *Underwood v London Music Hall* [1901] 2 Ch. 309.

Allottees of preference shares issued *ultra vires*, do not become ordinary shareholders; the allottees are entitled to their money back, with interest at 4 per cent, minus what they may have received in dividends (*Waverley Hydropathic Co v Barrowman*, 33 S.L.R. 131). See GUARANTEED.

As to the rights of preference shareholders in a winding up, see *Re Espuela Land & Cattle Co* [1909] 2 Ch. 187; *Anglo-French, etc. Co v Nicoll* [1921] 1 Ch. 286; *Collaroy Co v Giffard* [1928] 1 Ch. 144.

Preference shareholders (Railway Companies Act 1867 (c.127) s.12): see *Re Brighton & Dyke Railway*, 44 Ch. D. 28. See also NOMINAL; PREJUDICIALLY.

“Preferred stock” in an investment clause of a settlement meant stock having some preference or priority over the ordinary or common stock (*Re Powell-Cotton’s Resettlement* [1957] Ch. 159).

Payment of a friendly society’s claim on its officer “in preference” to his other debts (Friendly Societies Act 1875 (c.60) s.15(7)): “That is an English idiom. When a man says that he will do one thing in preference to another, according to the ordinary English idiom, the two things referred to are of the same kind” (per Esher M.R., *Re Miller* [1893] 1 Q.B. 327); which case showed that this preference against a bankrupt officer’s estate extended to moneys he had received by virtue of his office. *Re Miller* applied to Friendly Societies Act 1896 (c.25) s.35, which latter section entitled a friendly society to preference for its moneys not paid by its officer, even though he had ceased being its officer for some time before becoming bankrupt: see *Re Eilbeck* [1910] 1 K.B. 136.

Gift to one line “in preference” to another: see *Boys v Bradley*, 10 Hare 399, cited NEXT OF KIN.

“Given a preference” (Insolvency Act 1986 (c.45) s.239). Where an employee is entitled on the liquidation of a company to some level of compensation for redundancy or breach of contract, a payment far in excess of that sum could amount to a “preference” voidable under this section (*Re Clasper Group Services* (1988) 4 B.C.C. 673). A debenture granted to a bank by a company three months before the company went into creditors’ voluntary liquidation was held not to be a “preference” which could be set aside under this section (*Re M. C. Bacon* [1990] B.C.C. 78).

“Preference dividend”: Stat. Def., Income and Corporation Taxes Act 1988 (c.1) s.832.

See also FRAUDULENT PREFERENCE.

“Preference dividend”: Stat. Def., Income and Corporation Taxes Act 1970 (c.10) s.526.

"Preference share": Stat. Def., Income and Corporation Taxes Act 1970 (c.10) s.234(3).

"Ordinary preferred stock": see ORDINARY.

See CUMULATIVE; DIVIDEND; FRAUDULENT PREFERENCE; PREFERENTIAL; UNDUE PREFERENCE.

PREFERENTIAL. Preferential, as distinguished from proprietary, right: see *Ellis v Bedford* [1899] 1 Ch. 494, cited "Same interest", under SAME.

Preferential payments in bankruptcy and winding up: see *Re Mannesman Tube Co* [1901] 2 Ch. 93; *Re Klein* [1906] W.N. 148, cited SALARY.

"Preferential share": see *Re F. de Jong & Co Ltd* [1946] Ch. 211.

"Preferential toll": see *Newcastle v Workshop* [1902] 2 Ch. 156, cited FAIR OR MARKET TOLLS.

PREFERMENT. As regards the Church Discipline Act 1840 (c.86), "preferment" comprehends "every deanery, archdeaconry, prebend, canonry, office of minor canon, priest vicar, or vicar choral in holy orders, and every precentorship, treasurership, sub-deanery, chancellorship of the church, and other dignity and office in any cathedral or collegiate church; and every mastership, wardenship, and fellowship, in any collegiate church; and all benefices with cure of souls, comprehending therein all parishes, perpetual curacies, donatives, endowed public chapels, parochial chapelries, and chapelries or districts belonging to or reputed to belong or annexed or reputed to be annexed to any church or chapel; and every curacy, lectureship, readership, chaplaincy, office, or place, which requires the discharge of any spiritual duty; and whether the same be or be not within any exempt or peculiar jurisdiction" (s.2); that definition is adopted for Clerical Disabilities Act 1870 (c.91) s.2.

"Advancement or preferment in the world" means something more restricted than mere bounty (*Re Livesey, Livesey v Livesey* [1953] 1 W.L.R. 1114).

"Cathedral preferment": see CATHEDRAL.

Power to apply trust moneys for the "preferment" of beneficiaries: see ADVANCEMENT; BENEFIT.

PREFERRED. In the power given by Highway Act 1835 (c.50) s.98 to the court before whom a highway indictment was to be "preferred" to award costs, "preferred" meant "tried" (*R. v Pembridge*, 3 Q.B. 901; see further *R. v Upper Papworth*, 2 East 413); but cp. Costs in Criminal Cases Act 1952 (c.48) s.1. See TRIAL.

See PREFERENCE.

PREGNANT. "Pregnant with a child": see *Doe d. Blakiston v Haslewood*, 10 C.B. 544, cited POSTHUMOUS CHILD. As to period of gestation, see *Bosville v Att-Gen*, 12 P.D. 177, cited PRESUMPTION. See also GESTATION.

"Pregnant" with the aptitude to learn: see EDUCATIONAL ENDOWMENT.

See NEGATIVE PREGNANT.

PREGNANT WORKER. This has an EU-wide meaning of a pregnant worker who informs her employer of her condition (*Kiiski v Tempereen Kaupunki* (Case C-116/06) ECJ). See also *Mayr v Bäckerei* (Case C-506/06) [2008] I.R.L.R. 387 ECJ, [2008] 2 C.M.L.R. 27 as to when pregnancy begins in a case involving IVF.

PREJUDICE. Creditors "prejudiced by a voluntary winding-up" (Companies Act 1862 (c.89) s.145—but see Companies Act 1948 (c.38) s.310): see *Re Medical Battery Co* [1894] 1 Ch. 444; *Re Bishop* [1900] 2 Ch. 254. See *Reeve v Marsh*, 23 T.L.R. 24, cited DIRECTLY AFFECT.

"Unfairly prejudiced" (Patents Act 1949 (c.87) s.34(2)(d)(iii)): see UNFAIR.

PREJUDICE

See ANNOYANCE; UNDUE PREFERENCE; WITHOUT PREJUDICE.

PREJUDICE OF PURCHASER. The due notice of analysis (see *Barnes v Chipp*, 3 Ex. D. 176) to be given under Sale of Food and Drugs Act 1875 (c.63) s.14 (see now Food and Drugs Act 1938 (c.56) s.70), was a condition precedent to a prosecution (*Parsons v Birmingham Dairy Co*, 9 Q.B.D. 172; *Smart v Watts* [1895] 1 Q.B. 219); *secus*, of a prosecution under Margarine Act 1887 (c.29) s.6 (*Buckler v Wilson* [1896] 1 Q.B. 83), but under that latter section an analysis was admissible only against the person from whom the article was obtained (*Tyler v Kingham* [1900] 2 Q.B. 413). See ARTICLE DEMANDED.

The principle of *Sandys v Small* (above) was applicable to the sale of spirits diluted below the standard prescribed by the Sale of Food and Drugs Act Amendment Act 1879 (c.30) s.6 (*Gage v Elsey*, 10 Q.B.D. 518). See further *Dawes v Wilkinson* [1907] 1 K.B. 278. It was not necessary to show the seller's guilty knowledge (*Betts v Armstead*, 20 Q.B.D. 771). See hereon KNOWINGLY.

A purchaser who was sold meat described as minced beef or minced steak which contained a percentage of other meats, had it sold to him to his "prejudice" within the meaning of s.2 of the Food and Drugs Act 1955 (c.16) (*Shearer v Rowe* (1985) 84 L.G.R. 296).

"Prejudice" (Limitation Act 1980 (c.58) s.33(1)). On an application under this section the court is entitled, in considering all the circumstances, to take into account the existence, or lack of, prejudice to both parties (*Donovan v Gwentoy*s [1990] 1 W.L.R. 472).

See also SUBSTANTIALLY; UNFAIR.

PREJUDICIAL TO HEALTH. Public Health Act 1936 (c.49) ss.92, 343: includes "prejudicial to the health of an individual" and is not confined to public health (*Betts v Penge Urban DC* [1942] 2 K.B. 154).

PREJUDICIALLY. Damages when lands or buildings are "prejudicially affected" by the exercise of statutory powers, e.g. Metropolitan Commissioners of Sewers Act 1848 (c.112) s.50, connotes the same as injuriously affected (*R. v Metropolitan Board of Works*, 32 L.J.Q.B. 105). See INTERFERE.

"Prejudicially affect" rights of guaranteed or preference shareholders (Railway Companies Act 1867 (c.127) s.15): see *Re Neath & Brecon Railway* [1892] 1 Ch. 349, affirming *North J.*, 61 L.J. Ch. 172.

By s.2, no right, etc. was to be "prejudicially affected" by any marriage made valid by the Deceased Wife's Sister's Marriage Act 1907 (c.47): see *Re Whitfield* [1911] 1 Ch. 310, cited WIDOW; *Re Springfield* [1922] W.N. 36.

PRELIMINARY. "Preliminary contract": see *Re Otto Co* [1906] 2 Ch. 390, cited PROVISIONAL CONTRACT.

PREMIER. The King's Premier Sergeant had pre-audience in all the courts over all other barristers, including the Attorney-General (3 Bl. Com. 28 n).

The Prime Minister.

"Premier Earl": see ELDEST.

See SENIOR; cp. PUISNE.

PREMISES. The premises of a deed are all the foreparts of the deed before the HABENDUM (Touch. 75; 2 Bl. Com. 298). The word "premises" in fact signifies what has gone before (*Beacon Assurance v Gibb*, 1 Moo. P.C.N.S. 73); and therefore may with propriety be used in relation to any preceding subject or subjects. Thus where a testator devised a certain messuage and the furniture in it to A for life, and after his

decease he gave "the said messuage and premises" to B, the latter devise was held to carry the furniture as well as the messuage (*Sanford v Irby*, 4 L.J.O.S. Ch. 23; see also *Doe v Meakin*, 1 East 456; cp. *Fitzgerald v Field*, 1 Russ. 427). Cp. "parcels", under PARCEL. See also *Gardiner v Sevenoaks Rural DC* [1950] 2 All E.R. 84.

"In consideration of the premises": see *Bell v Welch*, 19 L.J.C.P. 184.

But frequently property is spoken of as "premises", without a preceding description or mention of it. Thus, where a testator gave permission to A to occupy a "mansion-house, garden, and premises", rent-free, it was held that the word "premises" meant "premises in immediate connection with the mansion, and without the occupation of which the mansion could not be conveniently occupied and enjoyed" (per Turner L.J., *Lethbridge v Lethbridge*, 31 L.J. Ch. 741). A park of 100 acres adjoining the mansion-house was accordingly, in that case, held to be included in the word "premises" (30 L.J. Ch. 388); *secus*, as regards the home farm, though it was contiguous to the park on which the mansion-house stood and was in hand at the death of the testator (31 L.J. Ch. 737). In such a connection "premises" is as nearly possible synonymous with appurtenances (*Read v Read* [1866] W.N. 386); and in, e.g. a lease of a "house and premises", "'premises' would naturally extend only to that which is closely and intimately connected with the house" (per Kelly C.B., *Minton v Geiger*, 28 L.T. 449, cited BELONGING), and therefore did not include an adjoining meadow. See further *Hibon v Hibon*, 8 L.T. 195, cited MESSAGE; *Doe d. Hemming v Willetts*, 18 L.J.C.P. 240; 2 Jarm. (8th edn), 1273; HOUSE. So, where a testator had six cottages in Church Lane, Wymondham—four on one side of the street and two on the other—and adjoining the two cottages he owned a piece of land on which was a stable and a building used as a coach-house, but part of the land was used as a common yard for the two cottages, the rest of the land being reserved by the testator as an orchard or garden ground; held, that the piece of land did not pass under a devise of "my six cottages and premises in Church Lane, Wymondham" (*Barfoot v Lee*, 50 S.J. 44). See further *Re Willis*, 55 S.J. 598, and cases therein cited, and *Re Chapman*, 45 L.T. 268, cited OCCUPATION.

"Premises" includes a pleasure garden occupied with a dwelling-house, for the purpose of rating for water supply (*Bristol Water Works Co v Uren*, 15 Q.B.D. 637). But, *semble*, as regards the right to make a demand on a water works company for water supply, "premises" does not include land unbuilt on, even though it be marked out for building (*Metropolitan Water Board v Paine* [1907] 1 K.B. 285); but it does include a houseboat in a more or less permanent site (*West Mersea Urban DC v Fraser* [1950] 2 K.B. 119).

"Premises supplied" (Water Act 1945 (c.42) ss.46, 49, Sch.3). Where water is supplied to two small buildings in a quarry it is supplied for the benefit of all working in the quarry, and it is the quarry, therefore, which constitutes the "premises supplied" (*Thames Valley Water Board v Hoveringham Gravels*, 68 L.G.R. 693).

"Premises" in s.31(1) of the West Pennine Water Order 1968 (No.512) included all appurtenant rights and easements and the right enjoyed by a shop which itself had no piped water, to use a communal lavatory, was a right in nature of an easement and accordingly water was supplied to the "premises" and a water rate was payable (*West Pennine Water Board v Jon Migaël* (1975) 73 L.G.R. 420).

"Premises", in popular language, frequently means buildings (*Beacon Assurance v Gibb*, 1 Moo. P.C.N.S. 97); that, however, was a case of a fire insurance on a ship, and "on the premises" in the policy was construed as "in the ship". So premises may be

PREMISES

confined to buildings by its context, as in Poor Rate Exemption Act 1833 (c.30) s.1; see also *North Manchester v Winstanley* [1910] A.C. 7, cited BURL.

“Premises . . . under his control or management” (Workmen’s Compensation Act 1925 (c.84) s.6(4)) “implies some definite place with metes and bounds, e.g. land, or land with buildings upon it, or a ship or anything of that kind” (per Buckley L.J.); the word did not include a public street along which rubbish from the place of work was carted (*Andrews v Andrews* [1908] 2 K.B. 567).

For a wide use of “premises” see *R. v Leith*, 1 E. & B. 136. See *Liford’s Case*, 11 Rep. 50 b, 51 a.

Unfinished buildings may be premises: see *Pease v Simms Sons & Cooke Ltd* [1932] 1 K.B. 723.

As to a covenant by a lessee to repair “the said premises”, see *Field v Curnick* [1926] 2 K.B. 374.

“The said premises”: see *Grove v Portal* [1902] 1 Ch. 727, cited ASSIGN.

“Premises” (Public Health Act 1875 (c.55) s.22) meant “premises in the state in which they are—not at the time the grant was made, the Act passed, or the arrangements come to—but it means the premises in all time according to the state in which they are at the time” (per North J., *New Windsor v Stovell*, 54 L.J. Ch. 117; citing *Newcomen v Coulson*, 5 Ch. D. 133; *Finch v Great Western Railway*, 5 Ex. D. 254).

“Premises comprised in one of the tenancies” (Rent Act 1957 (c.25) s.11(2) proviso): for the purpose of the proviso the word “premises” did not include an incorporated right such as a licence to use a garden (*M & JS Properties v White* [1959] 2 Q.B. 25).

“Premises” (Housing Repairs and Rent Act 1954 (c.53) s.41; Rent Act 1968 (c.23) s.18(5)) did not include a cottage on a large farm (*Hobhouse v Wall* [1963] 2 W.L.R. 604). “Premises” means a dwelling-house and accordingly, following *Hobhouse v Wall* (above), a farm, of which the farmhouse and adjoining cottage formed part, was not “premises”, and the tenant of the cottage was not protected (*Maunsell v Olins* [1974] 3 W.L.R. 835).

“Premises” (Rent Act 1965 (c.75) s.30) could include a caravan (*Norton v Knowles* [1969] 1 Q.B. 572) and could, for harassment purposes, consist of a single room (*Thurrock UDC v Shina* (1972) P. & C.R. 205).

“Premises” (Landlord and Tenant Act 1927 (c.36) s.5) included incorporeal hereditaments, e.g. fishing rights, comprised in a lease of land (*Whitley v Stumbles* [1930] A.C. 544).

“Premises” (Landlord and Tenant Act 1954 (c.56) s.23(1)) is not confined to buildings but includes the land whereon buildings are erected and the land immediately surrounding them and such incorporeal hereditaments as easements, and such other things as premises in the strict legal sense when the context so required and, indeed, land on which there are no buildings (*Bracey v Read* [1962] 3 W.L.R. 1194).

“Premises” (Licensing Act 1964 (c.26) s.20(1)) means “buildings” (*R. v Hastings Licensing Justices, Ex p. John Lovibond & Sons* [1968] 1 W.L.R. 735). A barge which was not permanently moored in one place was not “premises” in respect of which an on-licence could be granted under this Act, for the purposes of which it is necessary to have a structure fixed to a permanent site (*Gate v Bath Justices* (1983) 147 J.P. 289).

A cave might be premises for the storage of films within s.1 of the Celluloid and Cinematograph Film Act 1922 (c.35) (*Gardiner v Sevenoaks Rural DC* [1950] 2 All E.R. 84).

(Income Tax Act 1918 (c.40) Sch.D, Rules applicable to Cases I and II, r.5(2)) meant "the assessable unit" (*Cadbury Brothers v Sinclair* [1934] 2 K.B. 389 at 393).

A cattle ring which formed part of an auction mart was itself "premises occupied" within the meaning of the Income and Corporation Taxes Act 1970 (c.10) s.130(g) (*Wynne-Jones v Bedale Auction* [1977] S.T.C. 50).

"Premises where any retail trade or business is carried on" (Shops Act 1912 (c.3) s.19(1)). A market stall can be such premises and therefore a "shop" within the meaning of the section (*Greenwood v Whelan* [1967] 1 Q.B. 396).

"Premises" as used in the definition of a "shop" in the Shops Act 1950 (c.28) implies a building; at any rate something of greater substance than market stalls in a field (*Thanet DC v Ninedrive* [1978] 1 All E.R. 703).

"Premises where persons reside or sleep" (Copyright Act 1956 (c.74) s.12(7)). A holiday camp has been held to be such premises (*Phonographic Performance v Pontin's* [1968] Ch. 290).

A stationary road petrol-tanker from which petrol is being sold direct does not constitute part of the "premises" with s.1 of the Petroleum (Consolidation) Act 1928 (c.32) (*Grandi v Milburn* [1966] 2 Q.B. 263).

"Premises" (Defective Premises Act 1972 (c.35) s.4(1)(4)) means the whole premises, land and buildings, unless there is clear language to restrict its meaning (*Smith v Bradford Metropolitan Council* (1982) 44 P. & C.R. 178).

A demolition site is "premises" within the meaning of s.1 of the Clean Air Act 1968 (c.62) (*Sheffield City Council v ADH Demolition* (1983) 82 L.G.R. 177).

"Premises" for the purposes of ss.92 and 93 of the Public Health Act 1936 (c.49) means the premises which are affected by the nuisance prejudicial to health, not the premises causing the nuisance, in cases where they are not the same (*Pollway Nominees v Havering LBC* (1989) 21 H.L.R. 462).

"Part of premises . . . let as a whole" (Rent Act 1977 (c.42) s.137(3)). Where Pt II of the Landlord and Tenant Act 1954 (c.56) applied to the tenancy of premises, part of which were residential and the rest business premises, the residential part was not "premises" within the meaning of this section (*Pittalis v Grant* [1989] 1 All E.R. 622).

"Consumption on the premises" (Value Added Tax Act 1983 (c.55) Sch.5 Group 1 Note (3)). Where food was supplied from a snack bar in a small room in a large building, and was consumed elsewhere in the building, it was not consumed on the premises, as "premises" in this schedule must be taken to refer to the room from which the snack bar was operated and not the whole building (*R. v Customs and Excise Commissioners, Ex p. Sims (T/A Supersonic Snacks)* [1988] S.T.C. 210). See also CATERING.

(Landlord and Tenant Act 1987 (c.31).) Whether a relevant disposal of premises had taken place within the meaning of the 1987 Act was to be determined on a building by building basis and did not include a disposal of an adjoining building which had been purchased by a landlord at the same time and held under a separate registered title as the premises in question (*Kay Green v Twinsectra Ltd* [1996] 4 All E.R. 546).

"Premises" (Landlord and Tenant Act 1987 (c.31) s.46). In this section "premises" would include agricultural tenancies which included a dwelling, so that a sporting

PREMISES

estate of 940 acres could be “premises” for the purposes of this section (*Dallhold Estates (UK) v Lindsey Trading Properties, The Times*, December 15, 1993).

(London Government Act 1963 (c.33) Sch.12.) “Premises” in Sch.12 included “any place” and so covered Leicester Square (*R. v Bow Street Magistrates’ Court, Ex p. McDonald, The Times*, March 27, 1996).

(Protection from Eviction Act 1997 (c.43) s.5.) Premises let as an agricultural holding were not “premises let as a dwelling” for the purposes of the 1977 Act (*National Trust for Places of Historic Interest or Natural Beauty v Knipe* [1997] 4 All E.R. 627).

Premises which were let for business purposes under Pt II of the Landlord and Tenant Act 1954 and sublet for residential use qualified for protection under the Rent Act 1977 s.137(3) (*Wellcome Trust Ltd v Hammad* [1998] 1 All E.R. 657).

“Whilst not referring to *Alice in Wonderland*, both Counsel seem to be agreed that in the same lease, indeed in the same clause of the lease, the word ‘premises’ may bear one meaning at one time and another at another time. In our judgment it is clear that ‘premises’ is a chameleon like word which takes its meaning from its context. Since it can mean almost anything the task of the court is to give the word the meaning which it most naturally bears in its context and as reasonably understood by the commercial men who entered into the agreement. The first step is to examine how the words are used in the lease. . . . Since the habendum is so obviously important, we have started there. It begins in standard form with the words: ‘All that piece or parcel of ground with the messuage or dwelling house and all other erections thereupon built situate. . . .’ That would include not only the buildings but the land upon which they are actually built and the basement areas, all of which were created by the work of construction and development of the site and form part of the ‘erections thereupon built’. Then the habendum continues: ‘. . . which said premises are known as . . .’. The analysis so far leads us to conclude that there is no consistent or coherent meaning being given to these interchangeable phrases [‘the said premises’ and ‘the said demised premises’] which are being used without any apparent discrimination. It follows that ‘the said premises’ cannot with certainty be taken to refer to the building. There is much to suggest it is not so confined. . . . We are left in real doubt as to what was intended. It follows that the expression is ambiguous and, very much as the last resort, we are driven to construe the clause against the grantor. ‘Outside the said premises’ means outside the boundaries of the premises the subject of the demise.” (*Spring House (Freehold) Ltd v Mount Cook Land Ltd* [2002] 2 All E.R. 822 at [28]–[52], CA per Ward and Rix L.JJ.)

“‘Premises’ is an ordinary word whose precise meaning is to be derived from its context. It is to be noted that neither ‘premises’ nor ‘connection’ or ‘connected’ are defined in the definition section of this Act [the Water Industry Act 1991], s.219. ‘Premises’, it seems to me, will usually include buildings but may not be limited to buildings and might in some circumstances refer to a place with few or no buildings on it. Premises may in its context also consist of a part of a larger building. A garden centre of a builder’s merchant may have premises which include one or more buildings but the premises may extend to the larger site used for the keeping of plants or bricks and sand. A garden centre might conceivably have premises with no buildings on it at all. The premises of a farming business might consist of a group of farm buildings but it would be a somewhat strange context perhaps, though not impossible, which included 100 acres of fields as part of the farm premises. The

premises of a large corporation might in context consist of the entirety of a large office block. The premises of a small firm or company might consist of one or two rooms on an upper floor of a much larger building. In the general context of the supply of water and sewerage services premises are likely to include buildings or parts of buildings to which the water is supplied and from which the sewage is taken away.” (*Thames Water Ltd v Hampstead Homes Ltd* [2003] 1 W.L.R. 198, CA.)

Sewage treatment works can be “premises” for the purposes of the Environmental Protection Act 1990 (*Hounslow LBC v Thames Water Utilities Ltd* [2003] 3 W.L.R. 1243, Q.B.D., DC).

Stat. Def. (including a vehicle, an offshore installation and a tent or moveable structure), s.121 of the Terrorism Act 2000 (c.11).

Stat. Def., of a particularly wide kind, s.15(11) of the Child Support Act 1991 (c.48) inserted by s.14(4) of the Child Support, Pensions and Social Security Act 2000 (c.19).

Stat. Def., including land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft—s.92A of the Trade Marks Act 1994 (c.26), inserted by s.6 of the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 (c.25).

Stat. Def., “‘premises’ includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft, and
- (b) any tent or movable structure.” (Gangmasters (Licensing) Act 2004 (c.11) s.16(6).)

Stat. Def., Drug Trafficking Offences Act 1986 (c.32) s.29; Consumer Protection Act 1987 (c.43) s.45; Food Safety Act 1990 (c.16) s.1.

Stat. Def., “includes any place and, in particular, includes—(a) any vehicle, vessel, aircraft or hovercraft; (b) any offshore installation; and (c) any tent or movable structure” (Criminal Justice and Public Order Act 1994 (c.33) s.139(12); see also Jobseekers Act 1995 (c.18) s.33(11)); “includes any land, vehicle, vessel or mobile plant” (Environment Act 1995 (c.25) s.108(16)); “includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft” (Arbitration Act 1996 (c.23) s.82(1)); Education Act 1996 (c.56) s.311(1); Knives Act 1997 (c.21) s.5(6).

Stat. Def., Weights and Measures Act 1963 (c.31) s.58(1); Control of Office and Industrial Development Act 1965 (c.33) s.16(1); Trade Descriptions Act 1968 (c.29) s.39; Income and Corporation Taxes Act 1970 (c.10) s.90; Finance Act 1970 (c.24) s.2(10); Town and Country Planning Act 1971 (c.78) s.85; Betting and Gaming Duties Act 1972 (c.25) ss.16(2), 27(2); Health and Safety at Work Act 1974 (c.37) s.53; Guard Dogs Act 1975 (c.50) s.7; Development Land Tax Act 1976 (c.24) Sch.1 para.17; Race Relations Act 1976 (c.74) s.78(2); Criminal Law Act 1977 (c.45) s.12; Consumer Safety Act 1978 (c.38) Sch.2 para.1; Highways Act 1980 (c.66) s.329; Public Health (Control of Diseases) Act 1984 (c.22) s.74; Food Act 1984 (c.30) ss.111, 132; Police and Criminal Evidence Act 1984 (c.60) s.23; “includes land (including buildings), moveable structures, vehicles and aircraft” (Landmines Act 1998 (c.33) s.27(1)).

The concept of premises in which a flat is contained is that of an objectively recognisable space which a person would naturally regard as the premises (*Majorstake Ltd v Curtis* [2008] UKHL 10). Note that “premises” is described by Lord Carswell in *Majorstake* as a “chameleon-like word”, signifying that it necessarily takes its meaning from the context in which it is used.

PREMISES

“The word ‘premises’ in s.19 [of the Police and Criminal Evidence Act 1984] is widely defined (see s.23 of PACE). It is beyond argument that the SOCA officers were lawfully on the premises (namely the police station) and that the property which they wished to seize was at the police station. Further, it is clear from s.(5) that the power is additional to any other powers of seizure that may exist. The goods were restored when a receipt for them was signed and there were ample reasonable grounds for the exercise of the power. Thus, the preconditions in s.19 were satisfied. Finally, and in any event, there is no doubt but that property seized under one police power may be re-seized under another: see *Chief Constable of Merseyside v Hickman* [2006] EWHC 451 (Admin), although that case concerned a sum of money originally lawfully seized under s.19 of PACE and relevant to a prosecution for possession of drugs with intent to supply, which it was held was lawfully re-seized under the Proceeds of Crime Act 2002 after a conviction for simple possession.

“13. I readily accept that the words of s.19 are, on their face, sufficient to justify the further seizure of the property seized during the course of the execution of search warrants which it is conceded was unlawful. That construction, however, is to deny the structure of the legislation and to fail entirely to have regard to the way in which the serious interference, which is the power to enter premises and seize property, is controlled. For my part, I reject the proposition (which is the natural corollary of the power for which Miss Barton contends) that however unlawful the seizure of property, provided it ends up on premises at which the presence of a police officer is lawful, that officer can then convert what is unlawful possession into lawful possession.

“14. Neither do I accept that it is different whether or not a receipt has been signed for the property. What matters is physical possession. If the warrant does not comply with the law and seized goods have to be returned, before they can be lawfully re-seized (assuming the power to do so) they must be restored into the possession of the person from whom they are taken. On the other hand, a further warrant could be sought and obtained and, although the background would have to be disclosed to the magistrate or judge, I reject the suggestion made by the claimants’ solicitors in correspondence that the fact of the failed warrants would necessarily adversely affect the grant of new warrants if grounds are properly established.” (*Cook v Serious Organised Crime Agency* [2010] EWHC 2119 (Admin).)

Stat. Def., “means any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any offshore installation as defined in section 12 of the Mineral Workings (Offshore Installations) Act 1971, and
- (c) any tent or movable structure” (Public Order Act 1986 s.29H(4) inserted by Racial and Religious Hatred Act 2006 Sch.).

Stat. Def., “includes land (including buildings), movable structures, vehicles, vessels, aircraft and other means of transport” (Natural Environment and Rural Communities Act 2006 s.46(4)).

Stat. Def., “includes any place and, in particular, includes—(a) a vehicle, ship or aircraft; and (b) a structure or other object (whether movable or not, and whether on land or not)” (Wireless Telegraphy Act 2006 s.37(7)).

Stat. Def., "includes any place and in particular includes—(a) a vehicle, (b) an offshore installation within the meaning given in section 44 of the Petroleum Act 1998, and (c) a tent or moveable structure" (Justice and Security (Northern Ireland) Act 2007 s.42).

Stat. Def., includes land, moveable structures, vehicles, vessels, aircraft and hovercraft (Cluster Munitions (Prohibitions) Act 2010 s.30).

"Industrial or trade premises": see INDUSTRIAL PREMISES.

"Premises occupied", "premises occupied with dwelling-house": see OCCUPIED.

"I am quite unable to say that in using the word 'premises' rather than 'house' the parties have made a clear mistake. Nor do I accept that the clause in its present form is commercially nonsensical." (*Campbell v Daejan Properties Ltd* [2012] EWCA Civ 1503.)

Stat. Def., Protection of Freedoms Act 2012 s.46.

Stat. Def., "Includes any land or other place (whether enclosed or not), and any outbuildings that are, or are used as, part of premises" (Anti-social Behaviour, Crime and Policing Act 2014 s.92).

Stat. Def., "Includes land, buildings, moveable structures, vehicles and vessels" (Immigration Act 2014 s.37).

Stat. Def., "includes any place and any vehicle, vessel, stall or moveable structure" (Tobacco Retailers Act (Northern Ireland) 2014 s.22). "Includes any place other than a public area, and any stall, moveable structure, vehicle or vessel" (Licensing of Pavement Cafés (Northern Ireland) Act 2014 s.30).

Stat. Def. (very wide), Serious Crime Act 2015 s.65.

See LICENSED PREMISES; NEW PREMISES; ON THE PREMISES; SUITABILITY; UNLICENSED.

PREMISES (RELIGIOUS). Stat. Def., "premises which are used solely or mainly for religious purposes, or have been so used and have not subsequently been used solely or mainly for other purposes" (Marriage and Civil Partnership (Scotland) Act 2014 s.21).

PREMISES OCCUPIED AS A DWELLING UNDER LICENCE. See OCCUPIED.

PREMIUM. "Premium" ordinarily means increased value; it inaccurately describes a bonus on a life policy, but under a bequest of the "premium of insurance on my life" in the R. office, a bonus that had been declared on the policy, but not the policy itself, was held to pass (*Barrow v Methold*, 3 W.R. 629).

"Premium" is now frequently used to denote the annual payment for keeping up an insurance; or the money paid on an apprenticeship (*Walter v Everard* [1891] 2 Q.B. 369, cited NECESSARIES).

A lump sum payment in composition of future annual premiums on an insurance policy was a premium within s.11(1) of the Customs and Inland Revenue Act 1889 (c.7) (*Re Oakes' Settlement* [1951] Ch. 156).

"Premium", as regards the Finance Act 1912 (c.8) s.2: see *Kings v Cadogan (Earl)* [1915] 1 K.B. 821.

"Premium paid by him for any such insurance", as regards the Income Tax Act 1918 (c.40) s.32: see *Wilson v Simpson* [1926] 2 K.B. 500.

PREPAID

Where a landlord granted a tenancy on condition that the tenant sold his own house to a third party at an undervalue, the amount of the undervalue was a "premium" within s.18(2) of the Landlord and Tenant (Rent Control) Act 1949 (c.40) (*Elmdene Estates v White* [1960] A.C. 528).

"Issue of shares at a premium" (Companies Act 1948 (c.38) s.56) may be applicable where a holding company buys shares on an amalgamation (*Henry Head & Co v Ropner Holdings* [1951] 2 T.L.R. 1027).

"Premium" (Protection of Depositors Act 1963 (c.16) s.26(1)) is to be construed widely and is not confined to the payment of some ascertained capital sum on the repayment of the loan (*R. v Delmayne* [1970] 2 Q.B. 170).

Payments made by a lessee to reimburse development costs incurred by the lessor, in consideration for future rent reduction, constituted a "premium" or "any like sum" within the meaning of paras 2 and 10 of Sch.3 to the Capital Gains Tax Act 1979 (c.14) (*Clarke v United Real (Moorgate)* [1988] S.T.C. 273).

"The payment of any premium" (Rent Act 1977 (c.42) s.119). A sum paid by a prospective tenant to a sitting tenant in consideration of the latter's surrender of his protected tenancy was an unlawful "premium" for the purposes of this section (*Saleh v Robinson* [1988] 36 E.G. 180).

In determining what amounted to a premium for the purposes of s.29 of the Access to Justice Act 1999 the courts are entitled to go behind the description attached to payments by the parties (*Re Claims Direct Test Cases* [2003] 4 All E.R. 508, CA).

Stat. Def., Income Tax (Trading and Other Income) Act 2005 (c.5) s.307.

Stat. Def., Rent Act 1968 (c.23) s.92; Income and Corporation Taxes Act 1970 (c.10) ss.90, 323(4); Finance Act 1972 (c.41) s.69(4); Development Land Tax Act 1976 (c.24) Sch.1 para.17; Rent Act 1977 (c.42) s.128; Capital Gains Tax Act 1979 (c.14) s.83 Sch.3 para.10(2); Housing Act 1980 (c.51) s.79; Housing and Building Control Act 1984 (c.29) s.25.

Stat. Def., "means the amount or value of any money consideration given by the lessee as part of the same transaction in which a lease is granted by way of fine, premium or otherwise, but, where a registered leasehold estate of substantially the same land is surrendered on the grant of a new lease, the premium for the new lease shall not include the value of the surrendered lease" (Land Registration Fee Order 2009 (SI 2009/845) art.1).

PREPAID. "Prepaid letter": see BY POST.

PREPARATION. "Preparation for... an intended building" (Building (Safety, Health and Welfare) Regulations 1948 (No.1145) reg.2(1)) includes any preparations necessary for ancillary work in connection with the intended building (*Horsley v Collier and Catley* [1965] 1 W.L.R. 1359).

"Preparation or other product containing a substance" (Misuse of Drugs Act 1971 (c.38) Sch.2 Pt I para.5). It is for the jury, applying the ordinary and natural meaning of the word, to decide what constitutes a "preparation". The mere picking of a certain type of scheduled mushroom did not constitute a "preparation" (*R. v Walker* [1987] Crim.L.R. 565). Although "magic" mushrooms picked, packaged and frozen did not, in that state, amount to a "preparation" they did come within the meaning of the word "product" or within the phrase "or other product" (*Hodder v DPP; Matthews v DPP* [1990] Crim.L.R. 261).

"Preparation . . . of . . . preserved food" (Food Act 1984 (c.30) s.16). The slicing of cooked meats does not amount to "preparation" for the purposes of this section (*Leeds City Council v Dewhurst* [1990] Crim.L.R. 725).

Stat. Def., Food and Drugs Act 1955 (c.16) s.135(1).

PREPARATORY. A butcher is not guilty of doing an "act preparatory to an offence", e.g. overcharging, with Defence (General) Regulations 1939 reg.90(1), if the act is done by his assistant when he is not present (*Gardner v Akeroyd* [1952] 2 Q.B. 743).

"More than merely preparatory": see ATTEMPT.

PREPARE. A solicitor who undertakes to "prepare a conveyance" of property which his client has bought, thereby also undertakes to see that the title is right (*Fearn v Gordon*, 30 S.L.R. 399). See also *Lomas v Joseph*, 53 S.J. 271.

A party is not "prepared to purchase" a property, within the meaning of a commission agreement between the vendor and an estate agent, until he is contractually bound (*Taylor v Shenker*, 107 L.J. 348). Similarly a party is not "prepared to enter a contract" until the terms of the proposed sale have been asserted to by both parties (*Ackroyd & Sons v Hasan* [1960] 2 Q.B. 144). Nor is he "prepared to enter into a contract" for the purchase of a business even though the only bar to completion was the difficulty of obtaining the landlord's consent to the assignment of the leasehold business premises (*Wilkinson v Brown* [1966] 1 W.L.R. 194).

PREPARING. "Preparing land" (Income Tax Act 1952 (c.10) s.278) was a description of a process applied to land and did not describe the result or consequence of operating a process: see *McIntosh v Manchester Corp* [1952] 2 All E.R. 444.

PREPONDERANT. (Restrictive Trade Practices Act 1956 (c.68) s.21(1)(d).) Whether a person has a "preponderant" share of the market is a question of fact, and, though his share of the market is important, he can qualify without controlling over 50 per cent (*Re National Sulphuric Acid Association's Agreement* [1963] 1 W.L.R. 848; [1963] All E.R. 73). See also *Daily Mirror Newspapers v Gardner* [1968] 2 Q.B. 762; *Re Water-Tube Boilermakers' Agreement*, L.R. 1 R.P. 285.

PREROGATIVE. "Littleton speaketh of the king's prerogative but twice in all his bookes, namely here (s.125), and s.178, and in both places as part of the lawes of England. *Prærogativa* is derived of *præ*, i.e. *ante*, and *rogare*, that is, to aske or demand beforehand, whereof commeth *prærogativa*, and is denominated of the most excellent part; because though an act hath passed both the houses of the lords and commons in parliament, yet before it be a law, the royall assent must be asked or demanded and obtained, and this is the proper sense of the word. But legally it extends to all powers, preheminences, and priviledges, which the law giveth to the Crowne" (Co. Litt. 90B). See CROWN; FRANCHISE; ROYALTIES.

In times of national emergency the Crown has the right to requisition the chattels of the subject, e.g. ships, either under proclamation or merely exercising prerogative: see *Crown of Leon (Owners) v Admiralty Commissioners* [1921] 1 K.B. 595.

The prerogative right of His Majesty includes right of angary: see *Commercial & Estates Co of Egypt v Board of Trade* [1925] 1 K.B. 271. *Quære* whether the right of visit and search is a prerogative right (*Netherlands American Steam Navigation Co v HM Procurator-General* [1926] 1 K.B. 84).

"Prerogative mandamus": see MANDAMUS.

PREROGATIVE

PREROGATIVE INSTRUMENT. Stat. Def., “an Order in Council, warrant, charter or other instrument made under the prerogative” (Constitutional Reform Act 2005 (c.4) s.19).

PRESBYTER. See BISHOP.

PRESBYTERIAN. See *Att-Gen v Bunce*, L.R. 6 Eq. 563; *Att-Gen v Anderson*, 57 L.J. Ch. 543.

PRESCRIBE. “Prescribe the space about buildings”, as regards the Town Planning Act 1925 (c.16) s.11: see *Ellis and Ruislip-Northwood Urban DC Arbitration* [1920] 1 K.B. 343.

PRESCRIBED. “All laws should be made to commence *in futuro*, and be notified before their commencement; which is implied in the term ‘prescribed’” (1 Bl. Com. 46).

“Prescribed”, as regards the Water Works Clauses Act 1847 (c.17) s.2, and on “prescribed rate” of profits in s.75, see *Re Chelsea Water Works Co and Metropolitan Water Board* [1904] 2 K.B. 77.

“Prescribed distance”: see *Armstrong v Ogle*, 95 L.J.K.B. 908, distinguished *Leonard v Western Services* [1927] 1 K.B. 702.

“Prescribed limits” (Markets and Fairs Clauses Act 1847 (c.14) s.13) meant the boundaries of the borough to which the local Act related, and not the limits of the market (*Casswell v Cook*, 31 L.J.M.C. 1851). See further *Llandaff Market Co v Lyndon*, 8 C.B.N.S. 515; *Spurling v Bantoft* [1891] 2 Q.B. 384.

“Prescribed manner” (notice given under s.5 of the Landlord and Tenant Act 1927 (c.36)): see *Dobbin v Ogden*, 98 L.J.K.B. 321.

“In any manner expressly prescribed by Act of Parliament”: see MANNER.

See PUBLIC DEPARTMENT.

PRESCRIBED BY LAW. Standing Orders of the Prison Service made under powers in the Prison Act 1952 were capable of amounting to provision prescribed by law (provided that the provision was, as in the instant case, clear and readily capable of application) (*R. (Nilsen) v Governor of Full Sutton Prison* [2004] EWCA Civ 1540).

A situation may be prescribed by law despite the fact that it depends upon the common law and even if the common law is not without a degree of uncertainty (*Douglas v Hello! Ltd (No.2)* [2005] EWCA Civ 595).

For illustrative analysis of what amounts to a scheme “prescribed by law” see *Gallastegui, R. (on the application of) v Westminster City Council* [2013] EWCA Civ 28.

“56. Any interference will be prescribed by law where it has a basis in national law, the law is accessible and it is formulated with sufficient precision to enable an individual to foresee, to a degree that is reasonable in the circumstances, when the law will or might be applied: *Sunday Times v UK* (1979) 2 EHRR 245 at paras 47 and 49.” (*Core Issues Trust, R. (on the application of) v Secretary of State for Culture, Media and Sport and Minister for Women and Equalities* [2014] EWCA Civ 34.)

See IN ACCORDANCE WITH THE LAW.

PRESCRIPTION. “Prescription is when a man claimeth anything for that he, his ancestors or predecessors or they whose estate hee hath, have had or used it all the time whereof no mind is to the contrary” (Termes de la Ley). See TIME OUT OF MIND; MEMORY.

"Prescription is a title taking his substance of use and time allowed by the law. In the common law a prescription, which is personal, is for the most part applied to persons . . . And a custome, which is local, is alledged in no person, but layd within some mannor or other place" (Co. Litt. 113A, B, which see for illustration of this distinction; see also 4 Rep. 32); or, in other words, a title by prescription is when a man "and those under whom he claims have immemorially used to enjoy" the property or claim (2 Bl. Com. 263). See CUSTOM. See further *Burrows v Lang* [1901] 2 Ch. 508, cited TEMPORARY.

"An EASEMENT can only be acquired by prescription at common law where the dominant and servient tenements respectively belong to different owners in fee" (per Mathew L.J., *Kilgour v Gaddes* [1904] 1 K.B. 467); a tenant cannot acquire a right by prescription, except for his landlord, and therefore where there are two tenants under the same landlord, the one cannot prescribe for a right against the other, for that would be for the landlord to prescribe "as of right" against himself (*Kilgour* [1904] 1 K.B. 457, applying *Bright v Walker*, 3 L.J. Ex. 250, and *Wheaton v Maple* [1893] 3 Ch. 48; *Cory v Davies*, 92 L.J. Ch. 261). See further *Damper v Bassett* [1901] 2 Ch. 350, cited ENJOYMENT. Cp. as to the statutory right to light, *Morgan v Fear* [1907] A.C. 425, cited LIGHT.

See hereon Prescription Act 1832 (c.71); ACCESS; ACTUALLY ENJOYED; RIGHT; ACQUIESCENCE; INTERRUPTION; ADVERSE POSSESSION.

PRESENCE. But to aver in an indictment that the act charged was done in the "presence" of others would, semble, not be equivalent to stating that it was done in their "sight" or "view", for they might be blind, or not looking (*R. v Webb*, 2 C. & K. 937), but, in the report of that case in the Law Journal, Parke B. says, "I think that 'in the presence of' means 'in the sight of'" (18 L.J.M.C. 40).

Payment of wages of a discharged seaman "through, or in the presence of, the superintendent": see *Keslake v Board of Trade* [1903] 2 K.B. 453, cited THROUGH.

"Present at the same time" (Wills Act 1837 (c.26) s.9(c), as substituted by the Administration Act 1982 (c.53) s.17). Where a witness had attested a will in the presence of the testator, but in the absence of the second witness, who later witnessed the will in the presence of the first witness and the testator, the protestations of the first witness in front of the second witness amounted to an acknowledgment of her earlier signature so that the testator had acknowledged his signature in the presence of two witnesses present at the same time, who had both duly attested and the will was validly executed (*Couser v Couser* [1996] 1 W.L.R. 1301).

See REAL PRESENCE.

PRESENT. "Present form of investment": see *Re Smith* [1902] 2 Ch. 667, cited RETAIN.

Power to charge a company's "present and future property": see *Re Streatham Estates Co* [1897] 1 Ch. 15, cited PROPERTY.

"Present and past member" of a company (Companies Act 1862 (c.89) s.38): see *National Bank of Wales*, 66 L.J. Ch. 225, cited SHARE. See Companies Act 1948 (c.38) s.212.

"Present or future rates, taxes", etc. in a lessee's covenant for payment, generally speaking, refer to rates, etc. not existing at the date of the lease, and have no reference to charges made on or in respect of the property before the date of the lease, though not payable till after that date (per Williams L.J., *Surtees v Woodhouse* [1903] 1 K.B. 400, 401); see further per Stirling L.J., *Surtees*.

PRESENT

A by-law contained in the schedule to an Act forbidding greater obstruction than “at present” exists means at the time of the passing of the Act (*Hardie v Walker* (1949) S.L.T. 13).

“Present threat”: a threat of violence to be committed shortly in the future can amount to a “present” threat, and thus be the basis of a defence of duress, so long as the fear of the violence is present at the time the act is committed (*R. v Hudson*; *R. v Taylor* [1971] 2 Q.B. 202).

“Present or represented . . . at the hearing” (Matrimonial Proceedings (Magistrates’ Courts) Act 1960 (c.48) s.4(6)). These words refer to presence or representation at the time of the hearing and do not require that the presence or representation must endure throughout the hearing (*Snow v Snow* [1971] 3 W.L.R. 230).

“Cause to be . . . presented” (Theatres Act 1843 (c.68) s.15): see *Lovelace v DPP* [1954] 1 W.L.R. 1468, cited CAUSE OR PERMIT.

Trading stamps are presents within the meaning of a condition of sale not to resell goods “by reduction of price or by giving presents or otherwise” (*Gallaher v Supersafe Supermarkets*, L.R. 5 R.P. 89).

“Presented for payment” (Bills of Exchange Act 1882 (c.61) s.45). A cheque is “presented for payment” within the meaning of this section when it is presented to a responsible person in the paying bank, and this can be done over the counter. It is not necessary for it to be done through a bank account (*Ringham v Hackett* (1980) 124 S.J. 201).

“Complaint . . . presented to the tribunal” (Employment Protection (Consolidation) Act 1978 (c.44) s.67(2)). An originating application pushed under the door (which had no letter box) of an industrial tribunal regional office on the day after a bank holiday, which was the final day for presenting an unfair dismissal complaint, had been “presented” in time for the purposes of this section (*Ford v Stakis Hotels and Inns* [1987] I.C.R. 943).

To qualify for an attendance allowance under the Social Security Act 1975 (c.14) s.35(2B), (2C) and Social Security (Attendance Allowance) (No.2) Regulations 1975 (SI 1975/598) reg.2(1), a person had to have an independent existence and could not be an unborn child and had to be “present in GB” for 26 weeks of the 12 months preceding the commencement of an attendance allowance (*Social Security Decision*, No.R(A) 1/94).

“Present at”: see MEETING; ASSEMBLED.

“Present in person or by proxy”: see PROXY.

“Present or future husband”: see HUSBAND.

See AT THE PRESENT TIME; FUTURE; PRESENT TENSE; HANDSOME GRATUITY.

PRESENT RIGHT TO RECEIVE. This phrase in Real Property Limitation Act 1833 (c.27) s.40 meant an immediate right without waiting for the happening of any future event (*Farran v Beresford*, 10 Cl. & F. 319, 334). Cp. Limitation Act 1939 (c.21) s.18.

As to the same phrase in Law of Property Amendment Act 1860 (c.38) s.13, see *Re Johnson, Sly v Blake*, 29 Ch. D. 964; see further *Re Pardoe* [1906] 1 Ch. 265, reversed on the facts [1906] 2 Ch. 340.

As used in Real Property Limitation Act 1874 (c.57) s.8 (cp. Limitation Act 1939 (c.21) s.18): see *Hornsey v Monarch Building Society*, 24 Q.B.D. 1; *Re Owen* [1894] 3

Ch. 220; *Barcroft v Murphy*, above. See further *Hervey v Winn*, 22 T.L.R. 93; *Waddell v Harshaw* [1905] 1 I.R. 416; see also *Re Witham* [1922] 2 Ch. 413, and cases therein cited.

See also RIGHT TO RECEIVE.

PRESENT TENSE. Words in the present tense will frequently also import the future when not accompanied by words of restraint, such as “then”, “now”, etc. e.g. in a grant of woods “growing”, or in a proviso making a lease of a commandry void if the prior (the lessor) “or any of his brethren there being commanders will dwell thereupon” (4 Leon. 36, 37). See BEING; HAVING.

PRESENT TIME. See AT THE PRESENT TIME.

PRESENTATION. “The word ‘presentation’ may have many meanings according to the context or as circumstances require, and it may mean either ‘showing’ or ‘delivering over’” (per Jervis C.J., *Bartlett v Holmes*, 13 C.B. 630). In that case the vendor’s memorandum of contract was to deliver 1,000 tons of pig iron “on the presentation of this document”, and it was held there that “presentation” meant “delivering over”.

In ecclesiastical law, “presentation is derived à *præsentando* . . . and is the act of the patron offering his clerke to the bishop of that diocese, to be instituted to such a church, in these or the like words directed to the bishop, *præsento vobis A.B. clericum meum ad ecclesiam de Dale*, etc.” (Co. Litt. 120A). See Phil. Ecc. Law, 277; ADVOWSON; COLLATION; PRESENTMENT. See also *R. v Canterbury (Archbishop)* [1944] 1 All E.R. 179.

The time of the “presentation of a petition” (Matrimonial Causes Act 1937 (c.57) s.2—see Matrimonial Causes Act 1965 (c.72) s.1(1)(a)(ii)) means at the time the petition is filed with the court (*Alston v Alston* [1946] P. 203). See also PRESENT.

A petition is presented when it is delivered to the court for issue, not when it is issued (*Re Blights Builders Ltd* [2006] EWHC 3549 (Ch)).

PRESENTATION (OF DOCUMENT INSTITUTING PROCEEDINGS). A complaint is presented within the meaning of s.111(2) of the Employment Rights Act 1996 when it arrives at the Central Office of Employment Tribunals or an Office of the Tribunals. If a complaint is sent by post it will be rebuttably presumed to have been presented at the time when the letter would normally have been delivered (*Sealy v Consignia Plc* [2002] 3 All E.R. 801).

PRESENTATIVE. A presentative living is one in which a right of presentation, as distinct from a power of direct appointment, is vested in the patron: see hereon *R. v Foley*, 2 C.B. 664, cited DONATIVE; 2 Bl. Com. 22.

PRESENTLY ANSWER. See ANSWER.

PRESENTLY AVAILABLE. These words in s.4(1)(b) of the London Cab Act 1968 (c.7) mean “immediately available” (*Breame v Anderson*, 115, S.J. 36).

PRESENTLY ENTITLED. A person is “presently entitled” to a share of income under a trust if he may demand payment of the income from the trustee (*Federal Commissioner of Taxation v Whitting*, 68 C.L.R. 199).

PRESENTMENT. “Presentment’ is of two significations: one is presentments to a church, which when any man which hath right to give any benefice spirituall and nameth the person to the Bishop to whom hee will give it and maketh a writing to the Bishop for him, that is a presentation, or presentment . . . The other is a presentment or

PRESENTS

information by a jury in a court, before any officer which hath authority to punish any offence done contrary to the law" (Termes de la Ley). But such presentments are also made of matters not entailing punishment.

See GRAND JURY; HOMAGE.

PRESENTS. See THESE PRESENTS; TOUCH.

PRESERVATION. To restrain a lessee of a mine from allowing damage by ceasing to pump is "preservation" within the old R.S.C. Ord.50 r.3, now Ord.29 r.2 (*Strelley v Pearson*, 15 Ch. D. 113; see further *Pollini v Gray*, 12 Ch. D. 438). See further on the rule, *New Orleans SS Co v London, etc. Insurance Co* [1909] 1 K.B. 943.

"Proper preservation of the building" (Town and Country Planning Act 1971 (c.78) s.115). "Preservation" of a listed building, for the purposes of this section, means preserving it in the state it was in when first listed and not when the repairs notice was served (*Robbins v Secretary of State for the Environment* [1989] 1 All E.R. 878).

"Preservation of the peace": see GOOD BEHAVIOUR; PEACE; SURETY OF THE PEACE. Stat. Def., Town and Country Planning Act 1971 (c.78) s.125(3).

See PERISHABLE; REALISATION.

PRESERVATION ORDER. Stat. Def., Historic Buildings and Ancient Monuments Act 1953 (c.49) s.11.

PRESERVING. "Preserving the assets" (Companies (Winding Up) Rules 1949 r.195(1)) denotes some positive action, not mere inaction by the liquidator (*Re Linda Marie (In Liquidation)* (1988) 4 B.C.C. 463).

"Desirability of preserving" (Town and Country Planning Act 1971 (c.78) s.277(5)). The word "preserving" has to be interpreted in the wide sense of not causing harm rather than the narrow sense of making some positive contribution. Building developments which left the character or appearance of land in a conservation area unharmed did "preserve" that character or appearance within the purposes of this section (*South Lakeland DC v Secretary of State for the Environment* [1992] 2 W.L.R. 204).

"Establishing, preserving or defending his title": see ESTABLISH.

PRESERVED. See RECOVERED OR PRESERVED; BRED.

PRESERVES. As regards the Midland Railway Company (Rates and Charges) Order Confirmation Act 1891 (c. cexix), see *Warner's Sons & Co v Midland Railway* [1918] A.C. 616.

PRESIDING JUDGE. See JUDGE.

PRESS. "The finishing process of a press", in a patent specification: see *Barber v Grace*, 1 Ex. 339.

PRESSURE. Merely paying money under protest to suit one's own convenience is not paying under "pressure" (*Re Harrison*, 16 L.J. Ch. 170; *Re Boycott*, 29 Ch. D. 571). Cp. DURESS; UNDER PROTEST; UNDUE INFLUENCE.

PRESUME. Where an Act imposes a penalty if any one shall "presume" to do a stated thing, that "seems to me to imply, not a mere ignorant act, but an act in which a person knowingly takes upon him to do that which the law says shall not be done under the circumstances" (per Willes J., *Royse v Birley*, 48 L.J.C.P. 203, cited PUBLIC SERVICE).

PRESUMED. "Admeasurements are presumed to be correct": see ADMEASUREMENT; cp. ESTIMATED.

PRESUMPTION. "'Presumption' is the evidence of things not seen; where, from an apparent effect, you may infer a probable cause" (per counsel, arg., *Fanshaw v Rotherham*, 1 Eden 284). Cp. "necessary implication", under NECESSARY; JUDICIAL PERSUASION.

Presumptions are of "three sorts, (1) violent, (2) probable, and (3) light or temerary. *Violenta præsumptio* is manie times *plena probatio*; as if one be runne thorow the bodie with a sword in a house, whereof he instantly dieth, and a man is seene to come out of that house with a bloody sword, and no other man was at that time in the house. *Præsumptio probabilis* moveth little, but *Præsumptio levis seu temeraria* moveth not at all" (Co. Litt. 6B). See further 10 Encyc. 327–332.

A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged but of which there is (*Palmer*, 53 W.R. 169; *Re Rhodes*, 36 Ch. D. 586). See further Dart (8th edn), 341 et seq. As to the onus of proof, see *Prudential Assurance v Edmonds*, 2 App. Cas. 487, 511, 514; see further *Re Benjamin* [1902] 1 Ch. 723. Where two die together, e.g. in a shipwreck, there is no presumption of survivorship on the ground of sex, age, or otherwise (*Wing v Angrave*, 8 H.L. Cas. 183; *Re Greene*, L.R. 1 Eq. 289; *Re Alston* [1892] P. 142). See now Law of Property Act 1925 (c.20) s.184, on which see *Re Lindop* [1942] Ch. 377; *Re Mercer* [1944] 1 All E.R. 759; *Re Howard* [1944] P. 39; *Hickman v Peacey* [1945] A.C. 304; *Re Cohn* [1945] Ch. 5; *Re Pringle* [1946] Ch. 142; *Re Bate* [1947] L.J.R. 1409. The Probate Division will not presume death until the person has been advertised for (*Re Robertson* [1896] P. 8; *Re Matthews*, 67 L.J.P.D. & A. 76). The power to presume death is sometimes made a discretionary power: see *Escritt v Todmorden Society* [1896] 1 Q.B. 461, cited MAY. See BIGAMY.

"A strong or probable presumption" against a fugitive criminal (Fugitive Offenders Act 1881 (c.69) s.5): see *R. v Spilsbury*, 79 L.T. 211; the phrase means that there must be such evidence that, if uncontradicted, a reasonable-minded jury may convict on it (*R. v Brixton Prison Governor, Ex p. Bidwell* [1937] 1 K.B. 305). These words have their ordinary meaning and it is not enough that the magistrate thinks a jury might convict at the subsequent trial if he himself is not satisfied that a strong and probable presumption of guilt is shown by the evidence before him (*Armah v Government of Ghana* [1968] A.C. 192).

For other presumptions, see Rosc. N.P. 5, 33 et seq. Cp. "way of necessity", under WAY. See further HIGHWAY; VIEW.

Presumption of acceptance of a gift by the donee: see GIFT.

Presumption that the legal estate in lands has passed: see LEGAL ESTATE.

PRESUMPTION OF DEATH ORDER. For civil partnership: Stat. Def., Civil Partnership Act 2004 (c.33) s.37.

PRESUMPTIVE. A presumptive share is the antithesis of one that is vested; therefore, a power of advancement to A out of "his presumptive share" can hardly be properly exercised when the share has become vested (*Molyneux v Fletcher* [1898] 1 Q.B. 648, cited ADVANCEMENT). A clause for maintenance in favour of minors "presumptively entitled", will need a strong context to control that phrase into any other than its ordinary meaning (*King-Harman v Cayley* [1899] 1 I.R. 39). See hereon *Bennett v Houldsworth*, 55 S.J. 270, cited JOINT TENANCY; see also *Re Deloitte* [1919] 1 Ch. 209.

"Heir presumptive": see HEIR APPARENT.

PRETENCE

PRETENCE. A charter (restoring one surrendered) granting all franchises, rights, etc. previously enjoyed “by virtue or pretence of any charter”, only (under the word “pretence”) excludes very scrupulous, nice, and subtle inquiry upon doubtful points; and does not authorise matters done under a previous charter that were contrary to its clear and unambiguous ordinance” (*R. v Salway*, 9 B. & C. 436).

“Pretence” and “practices” are sometimes used as implying something of an improper description: see *Barber v Gamson*, 4 B. & Ald. 281.

See CHARGE OF FRAUD; FALSE PRETENCE.

PRETENCED. A “pretenced” title within Jury Act 1540 (c.9) s.2 was one purely fictitious (*Kennedy v Lyell*, 15 Q.B.D. 491). At one time a right of entry disannexed from actual possession, however good and true it might be, was a pretended title within the statute (Co. Litt. 369A; *Partridge v Strange*, 1 Plowd. 88; *Doe d. Williams v Evans*, 14 L.J.C.P. 237; 1 C.B. 717); but as a right of entry, formerly incapable of being conveyed, could be conveyed (Real Property Act 1845 (c.106) s.6), it was not, as such, a pretended title within the statute of Henry VIII (*Jenkins v Jones*, 9 Q.B.D. 128). The section was repealed by Land Transfer Act 1897 (c.69) s.11.

“‘Pretensed right or title’ is where one is in possession of lands or tenements, and another who is out of possession, claimeth it, and sueth for it” (Termes de la Ley).

“Buying or selling a pretended title is buying or selling lands, of which the title is known to be in dispute, below the value which they would have if the title was not in dispute, and to the intent that the buyer may carry on the suit in place of the seller” (Steph. Cr. (3rd edn), 97).

PRETEND. To “pretend”, or “profess”, to do a thing, e.g. to tell one’s fortunes, usually connotes that what is done is with the intention to deceive (*R. v Entwistle* [1899] 1 Q.B. 846). See *Stonehouse v Mason* [1921] 2 K.B. 818; *Irwin v Barker*, 69 S.J. 589.

“Pretend or falsely assert in writing” a servant’s character (Servant’s Characters Act 1792 (c.56)), “created two separate offences... therefore pretending might be committed by conduct or word of mouth”: see *R. v Costello*, 54 S.J. 13.

“Falsely pretending to be in Holy Order” (Marriage Act 1949 (c.76) s.75(1)(d)): see *R. v Kemp* [1964] 2 Q.B. 341, cited FALSELY PRETENDING.

“Pretend to be” a solicitor: see SOLICITOR.

See PURPORTING.

PRETENDED. See PRETENCED.

PRETENDING TO CLAIM. “A covenant that the lessee shall quietly enjoy against all claiming ‘or pretending to claim’ a right in the premises, extends to all interruptions, be the claim legal or not, provided it appear that the disturber do not claim under the lessee himself” (Woodf. (16th edn) 723, citing *Chaplin v Southgate*, 10 Mod. 384; see now (24th edn) 629; see also *Ibbett v De la Salle*, 30 L.J. Ex. 44). See QUIET ENJOYMENT.

PRETEXT. “Pretext of monopoly” (Statute of Monopolies, 1623 (21 Jac. 1 c.3) s.4); see *Peck v Hindes*, 67 L.J.Q.B. 272.

PREVENT. To “prevent” does not mean only an obstruction by physical force, e.g. in the phrase that one party to a bargain “prevented or discharged” the other from fulfilling his part thereof: “In answer to a question from the court, we were told it would not be a ‘preventing’ of the delivery of goods if the purchaser were to write in a letter to the person who ought to supply them, ‘should you come to my house to deliver them, I will blow your brains out’. But may I not reasonably say that I was

'prevented' from completing a contract by being desired not to complete it"?; and though "discharge" is sometimes used as equivalent to "release", yet, in such a phrase as the above, it "only means, like 'prevent', that the act of the other side was the cause of the contract not being executed or performed" (per Campbell, C.J., *Cort v Ambergate Railway*, 17 Q.B. 145, 146: cp. OBSTRUCT, towards end). So, if the fulfilment of a contract, legal in its inception, becomes contrary to law, the contractor is "prevented" from fulfilling it (*United States v Pelly*, 47 W.R. 332).

"Preventing the loading", in a charter-party, means preventing in the sense of stopping it, either before it has been commenced or whilst it is going on" (per Pollock, B., *Coverdale v Grant*, 8 Q.B.D. 602, a definition, semble, not affected by the reversal of the judgment, 9 App. Cas. 470).

"Prevent or delay" loading: see *Arden SS Co v Mathwin & Son* [1912] S.C. 211.

"Prevented by hostilities" (shipment of goods as regards clause of contract): see *Re Comptoir Commercial Anversois and Power, Son & Co's Arbitration* [1920] 1 K.B. 868.

"Prevented or hindered" by war from carrying out a contract for the sale of goods: see *Dixon & Sons Ltd v Henderson, Craig & Co Ltd* [1919] 2 K.B. 779.

"Preventing or hindering" in a commercial contract: see *Wilson & Co v Tennants Ltd* [1917] A.C. 495.

"Preventing . . . access" (Road Traffic Regulation Act 1967 (c.76) s.1(5) as amended by the Transport Act 1968 (c.73) s.126(4) Sch.18 Pt 11) means actually precluding access. Hindering access by making restriction orders in respect of roads not immediately adjacent to the quarry in question is not "preventing" access within the meaning of this section (*Corfe Transport v Gwynedd CC* [1984] R.T.R.79).

"For the purpose of preventing or detecting serious crime" (Interception of Communications Act 1985 (c.56) s.2(2)). Whereas the Secretary of State may issue a warrant requiring the interception of communications "for the purpose of preventing or detecting serious crime" that phrase was held not to extend to the *prosecution* of such crime (*R. v Preston, The Times*, November 8, 1993).

PREVENTION. See REGULATE.

"Necessary . . . for the prevention of . . . crime" (Contempt of Court Act 1981 (c.49) s.10). The phrase "prevention of crime" is to be construed in its wider or more natural sense rather than the restricted sense of prevention of a particular crime (*Re an Inquiry under the Company Securities (Insider Dealing) Act 1985* [1988] 2 W.L.R. 33). See also NECESSARY; REASONABLE EXCUSE.

PREVENTIVE JUSTICE. The power of a magistrate to order a person to enter into recognisances to find sureties to be of good behaviour is referred to by Blackstone (Com., Vol. iv, 251) as preventive justice (*R. v Sandbach, Ex p. Williams* [1935] 2 K.B. 192, 196).

PREVIOUS. "Previous conviction": see Stephen Cr. (9th edn), art.55, as to punishment for felony after a previous conviction for felony; see also SECOND OFFENCE.

"Previous conviction" (Criminal Justice Act 1948 (c.58) s.21): a conviction which results in the making of a probation order is not within the phrase (*R. v Stobbart* [1951] 2 T.L.R. 823). See also *R. v Batchelor*, 36 Cr.App.R. 64.

"Any previous dividend": see *Kent Water Works Co v Lamplough* [1904] A.C. 27, cited DIVIDEND.

PREVIOUSLY

Where a lessee has an option to purchase at any time before a stated day, on giving so many days or months "previous notice" to the lessor, the notice must be given the prescribed length of time before the stated day (*Riddell v Durnford* [1893] W.N. 30).

"Previous twelve months" (Workmen's Compensation Act 1925 (c.84) s.9(2)) means the twelve months previous to the accident (*Bywater v Stothert & Pitt*, 25 B.W.C.C. 422).

"Previous proceeding" (Matrimonial Causes Rules 1950 (No.1940) r.4(1)(h)). The issue of a summons under the Summary Jurisdiction (Separation and Maintenance) Acts 1895–1949 was a "previous proceeding" within the meaning of this rule (*Penny v Penny* [1952] 2 All E. R. 938).

"Previous terms" (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17) s.2(3)) meant the terms of the letting on which the standard rent was fixed, regardless of how many lettings there might have been between that one and the one immediately in question (*Regis Property Co v Redman* [1956] 2 Q.B. 612).

"Previous litigation": see LITIGATION.

"Previous occasions": see OCCASION.

PREVIOUSLY. A substantial gift to issue of members of a class "who may previously have died" means, generally, previously to the period of distribution (*Re Wintle* [1896] 2 Ch. 719).

A power to be exercised "upon or previously to" marriage cannot mean "after" and must be executed before the marriage (*Re Borrowes*, I.R. 2 Eq. 468; but see *Re Sampson and Wall*, 25 Ch. D. 482, cited OR, and UPON); if it were "at" marriage, it could be executed as soon as the marriage takes place or at any time after (*Re Creagh*, 25 L.R. Ir. 128).

Weight of vehicle and coal "to be previously ascertained" (Weights and Measures Act 1889 (c.21) s.22(1)) did not connote that the weighing was to be immediately before every delivery; it was sufficient if it had been done so recently and under such circumstances that its correctness had been ascertained for the purpose of such delivery (*Beardsley v Pike*, 90 L.T. 652). Cp. BY WEIGHT.

An employee's agreement in restraint of trade not, at the determination of the service, to the engaged in trade or business with any goods which his employer "shall have dealt in at any time previously, to such determination", is limited to the period of his employment (*Moenich v Fenestre*, 61 L.J. Ch. 737); "dealt in" means dealt in like the employer had done, e.g. if the employer is a commission agent, it does not mean bought or sold across the counter, but means dealt in as a commission agent (per Smith L.J., *Moenich*). See further TRADE.

"The sum previously offered" (Lands Clauses Consolidation Act 1845 (c.18) s.51) meant the sum mentioned in the notice for a jury given under s.38 (*R. v Smith*, 12 Q.B.D. 481; *Metropolitan Railway v Turnham*, 32 L.J.M.C. 249). See further OFFER.

"Previously borne by the landlord"; "previously borne by the tenant" (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17) s.2(3)): meant borne by the landlord or tenant under the terms of the letting on which the standard rent was fixed, regardless of how many lettings there might have been between that one and the one immediately in question (*Regis Property Co v Redman* [1956] 2 Q.B. 612).

"Previously brought" (Administration of Justice Act 1956 (c.46) s.4): see *The World Harmony* [1967] P. 341.

"Security... has previously been given" (Merchant Shipping (Liability of Shipowners and Others) Act 1958 (c.62) s.5(2)(a)). It was held that these words refer

only to the security given before the arrest of the ship, or before the giving of security to avoid such arrest, and they do not refer also to security given after the arrest of the ship but before the giving of further security to obtain her release from arrest (*The "Wladyslaw Lokietek"* [1978] 2 Lloyd's Rep. 520).

The word "previously" in r.195 of the Companies (Winding-up) Rules 1949 (SI 1949/330 (L4)) means previously to the making of the winding-up order and not previously to the presentation of the petition (*Re AV Sorge & Co* [1986] P.C.C. 380).

PRICE. "Price is the sum of money or its equivalent at which a thing is valued" (per Starke J. in *Johnston, Fear & Kingham and the Offset Printing Co Pty. Ltd.*, 67 C.L.R. 314, 327).

"Make a price": see POOL; RIGGING. The phrase also means quoting a price at which a jobber on the Stock Exchange is prepared to deal.

"Price to be fixed", by valuation of mains, pipes, etc. of water works: see *Stockton v Kirkleatham* [1893] A.C. 444; cp. TRAMWAY.

"Price which the property would fetch if sold in the open market": see *Ellesmere (Earl of) v Inland Revenue Commissioners* [1918] 2 K.B. 735.

"Price of any property" (Borrowing (Control and Guarantees) Act 1946 (c.58) s.4(2)) refers only to a cash or money consideration (*London and County Commercial Properties Investments v Att-Gen* [1953] 1 W.L.R. 312).

"Price paid" (Land Registration Rules 1925 (No.1093) r.247(1)) means the price which is payable and not the money which has actually been received by the transferor (*London and Cheshire Insurance Co v Laplagrene Property Co* [1971] 1 Ch. 499).

In assessing the price of wheat for the purpose of awarding corn rents under an Inclosure Act the sum obtained by a grower of wheat under the Cereals Deficiency Payments Order 1955, should be left out of account. The word "price" meant what a grower could obtain from a buyer under the contract of sale and did not include any additional sum payable by any other person under any legislation (*Re Scremby Corn Rents, Ex p. Church Commissioners for England* [1960] 1 W.L.R. 1227).

"Hire Purchase price" (Hire Purchase Act 1954 (c.51) s.21(1)): Where a car was taken on hire-purchase and the dealer agreed to take out an insurance policy on the hirer's behalf, the cost of the insurance policy was held, since insurance was a matter inextricably related to a motor car, to be part of the purchase price (*Mutual Finance Ltd v Davidson* [1963] 1 W.L.R. 134).

Stat. Def., Hire-Purchase Act 1965 (c.66) s.37(2); Fair Trading Act 1973 (c.41) s.137; Restrictive Trade Practices Act 1976 (c.34) s.43; Resale Prices Act 1976 (c.53) s.8.

Cp. PURCHASE MONEY. See BEST PRICE; FAIR PRICE; HAMMER PRICE; INVOICE PRICE; MARKET VALUE; REGULATION; CONSUMING; EQUITABLE.

PRIEST. A priest in the Church of England, "by his ordination, receives authority to preach the word of God, and to consecrate and administer the Holy Communion in the congregation where he shall be lawfully appointed thereunto" (PHIL. ECC. LAW, 111). Cp. CLERGYMAN.

A person ordained priest in the Church of Ireland is disqualified from sitting and voting in the House of Commons under the House of Commons Clergy Disqualification Act 1801 (c.63) s.1 (*Re Rev. Macmanaway* [1951] A.C. 161).

See RESIDENT PRIEST.

PRIMA FACIE. Prima facie evidence of the qualification of a lodger for the parliamentary franchise was furnished by the declaration annexed to his claim

(Parliamentary and Municipal Registration Act 1878 (c.26) s.23); prima facie proof of an objection to the franchise was given “if it is shown to the satisfaction of the revising barrister (by EVIDENCE, repute, or otherwise) that there is reasonable ground for believing that the objection is well founded, and that (by reason of the person objected to not being present for examination, or for some other reason) the objector is prevented from discovering or proving the truth respecting the entry objected to” (s.28(10)); see hereon *Jenkins v Grocott* [1904] 1 K.B. 374. This provision was in aid of the objector, and the revising barrister was not entitled to act upon “repute” for the purpose of defeating an objection: see *Kent v Fittall (No.3)* [1909] 1 K.B. 215; *Astell v Barrett*, 103 L.T. 905; *Storey v Bermondsey Town Clerk* [1910] 1 K.B. 203.

The use of the phrase “prima facie” in s.50(3) of the Sale of Goods Act 1979 (c.54) entitles the court to depart from a literal construction of the subsequent language in order to determine what would, in all the circumstances, be a fair price on the day in question (*Shearson Lehman Hutton v MacLaine Watson & Co* [1989] 2 Lloyd’s Rep. 570).

“23. The phrase ‘a prima facie case’ is very well known and often used. I have been a little surprised to find that there is not complete clarity as to what the phrase means. Indeed in *R v Governor of Brixton Prison ex parte Armah* [1968] AC 192 at 229, Lord Reid said: ‘The matter has been further complicated by the frequent use of the phrase ‘a prima facie case.’ That phrase is not self-explanatory: what is it that the case shows prima facie or at first sight? Is it that on the evidence as it stands at the moment the accused would seem to be guilty, or is it that the evidence contains allegations set out in such a way that further investigation is justified? I would hope that a less ambiguous phrase will be used especially in any future legislation.’ 24. In *American Cyanamid v Ethicon Ltd* [1975] AC 396, counsel submitted to the House of Lords (at 399B) that “prima facie” could have many meanings and Lord Diplock remarked (at 404F) that “prima facie case” might in many contexts be an elusive concept. Before that decision, on an application for an interim injunction, the court asked itself whether the claimant had shown a prima facie case (see the detailed discussion of the earlier authorities at 406H – 407F) and in that context, for the purposes of reaching an interlocutory judgment, the court asked itself what judgment was then appropriate on the basis of the then existing evidence, even though that evidence was conflicting and even though the court did not have the benefit of oral testimony or cross-examination: see per Lord Diplock at 404G – 405B.” (*Bhullar v Bhullar* [2015] EWHC 1943 (Ch).)

Cp. CONCLUSIVE EVIDENCE.

PRIMA TONSURA. The *prima tonsura* of a meadow is the first grass or chief hay crop, and he who hath it hath, prima facie, the freehold of the meadow, “and those who have the after-pasture have but the profits in nature of common” (*Ward v Petifer*, Cro. Car. 362; see further *Stammers v Dixon*, 7 East 200). See hereon *Reynolds v Ilchester*, 55 S.J. 379, where prima tonsura is called “foreshare” and the after pasture is called “aftershare”.

PRIMAGE. “This is a small payment made by the owner or consignee of the goods to the master for his care and trouble, which varies in amount according to the particular trade in which the ship is engaged” (1 Maude & P. 121; see also Cowel; 10 Encyc. 335). When used with “primage”—e.g. “paying freight with primage and average accustomed”—“average” denotes several petty charges which are to be borne

“partly by the ship and partly by the cargo, e.g. towage, beaconage, etc.” (Abbott, 531). See PRIVILEGE. As to what will exclude the right to primage, see *Caughey v Gordon*, 3 C.P.D. 419.

PRIMARY. “Of conveyances by the Common Law, some may be called original, or primary, conveyances, which are those by means whereof the benefit or estate is created or first arises; others are derivative, or secondary, whereby the benefit or estate originally created is enlarged, restrained, transferred, or extinguished. Original conveyances are the following: feoffment; gift; grant; lease; exchange; partition. Derivative are: release; confirmation; surrender; assignment; defeasance” (2 Bl. Com. 309, 310). See SUPPLEMENTAL.

As to the “primary duty” of a charterer to supply a cargo, see *Chandris v Isbrandtsen-Moller Co Inc.* [1950] 1 K.B. 240, 252.

The “primary” evidence of a document is itself; “secondary” evidence of it is, e.g. a copy, or the recollection of it by a person who has read it. “The terms ‘primary’ and ‘secondary’ evidence are used by our law in the limited sense of the original and derivative evidence of written documents, the latter of which is receivable when, by credible testimony, the existence of the primary source has been established and its absence explained” (s.89, Best on Evidence (12th edn), 399 et seq.). See further Rosc. N.P. (20th edn), 1; Taylor on Evidence (9th edn), 184, 277. Cp. PRIMA FACIE EVIDENCE.

“Primarily occupied and used otherwise than for the purpose of a retail shop” (Rating and Valuation (Appointment) Act 1928 (c.44) s.3(1)). Premises used as a factory canteen were held not to be within this description (*Simmonds Aerocessories (Western) Ltd v Pontypridd Area Assessment Committee* [1944] K.B. 231).

“Primary security” (Stamp Act 1891 (c.39) Sch.1): see *IRC v Ansbacher & Co* [1963] A.C. 191; *British-Italian Corporation v IRC* [1963] A.C. 211.

“Primary education”: see ELEMENTARY; EDUCATION.

“Primary security”: see SECURITY FOR MONEY.

PRIMARY CARE TRUST. Stat. Def., National Health Service Act 2006 s.18.

PRIMARY CONSIDERATION. “They must be regarded as ‘a primary consideration’; that is to say that they must be at least one of those matters at the forefront of the decision maker’s thinking. Best interests are not merely relevant. They are given a hierarchical importance. The decision maker is being told by Article 3 that they are not just something to be taken into account but something to be afforded a grander status. They are to be regarded as a matter of importance. That having been said, the measure of that importance in the final balance will depend upon the facts and circumstances of the particular case.” (*H.S. v The Secretary of State for the Home Department* [2010] Scot. C.S. CSIH 97.)

PRIMARY LEGISLATION. Stat. Def., Human Rights Act 1998 (c.42) s.21(1).

Stat. Def. (including devolved legislation), Climate Change Act 2008 s.97.

Stat. Def., Welfare Reform Act 2012 s.39; Public Service Pensions Act 2013 s.37.

Stat. Def. (in context of Northern Ireland), “Northern Ireland legislation or any provision of an Act of Parliament of the United Kingdom that would be within the legislative competence of the Assembly were that provision contained in an Act of the Assembly” (Public Service Pensions Act (Northern Ireland) 2014 s.34).

PRIME COST. Marine Insurance Act 1906 (c.41) s.16: means the prime cost to the assured at or about the date of shipment, or at any rate at some time when the prime

PRIME

cost can reasonably be deemed to represent the value to the owner at the date of shipment (*Williams v Atlantic Insurance Co* [1933] 1 K.B. 81).

PRIME MOVER. Stat. Def., Factories Act 1961 (c.34) s.176.

PRIMER SEISIN. See *Termes de la Ley*; Cowel; 2 Bl. Com. 66, 87.

PRIMOGENITURE. Primogeniture is “the right of the eldest among the males to inherit” real estate (Wms. R.P. (1st edn), Pt 1, Ch. 4; see *HEIR*), or a *DIGNITY*.

PRINCIPAL. A principal in the first degree was one who actually committed a felony and a principal in the second degree was one who aided or abetted him but these terms disappeared with the abolition of the distinction between felony and misdemeanor by the Criminal Law Amendment Act 1967 (c.58) s.1.

Where the jurisdiction clause in a bill of lading provided for disputes to be settled in the country where the carrier had its “principal place of business”, it was held that “principal” does not mean “main” but “chief” or “most important” and the principal place of business does not necessarily mean the place where most of the business is carried out; so that the principal place of business of shipowners (incorporated in Liberia but domiciled in Germany) of a ship managed from Hong Kong was Germany (*The Rewia* [1991] 2 Lloyd’s Rep. 325).

“Principal place of business” (R.S.C. Ord.81 r.3(1)): see *SERVE*.

“Principal home”: see *HOME*.

As to contextual effect of “principal” to cut down a testamentary gift to personality, see *Saumarez v Saumarez*, 4 My. & C. 331; *Stokes v Salomons*, 20 L.J. Ch. 343; *Coard v Holderness*, 20 Bea. 147.

A clause in a will that a person should adopt the “last and principal surname” is void for uncertainty (*Re Lewis’ Will Trusts* [1951] 2 T.L.R. 1032).

“Principal” was used for principal contractor in s.6 of the Workmen’s Compensation Act 1925 (c.84); he was not liable under that section if the workman had no claim against his immediate employer (see *Marks v Carne* [1909] 2 K.B. 516). As to the liability of a corporation as “principal” under the section, see *Mulrooney v Todd* [1909] 1 K.B. 165. As to the section generally, see *Skates v Jones* [1910] 2 K.B. 903; *Miles v Dawe*, 8 B.W.C.C. 225.

Stat. Def., Finance Act 1965 (c.25) s.45(1).

See *AGENT*.

PRINCIPAL (IN RELATION TO SUM OF MONEY). The word “principal” in relation to a sum of money is used to differentiate the original sum, or “tree”, from the interest, or “fruit”, which it may yield (*Gotham v Doodes* [2006] EWCA Civ 1080 per Sir Andrew Morritt C. at [28]).

PRINCIPAL CAUSE. “Principal cause”, “cross cause” (Admiralty Court Act 1860 (c.10) s.34); see *The Rougemont* [1893] P. 275.

PRINCIPAL ENGINEER. As to who is the “principal engineer” of a railway company, within a clause referring disputes to arbitration, see *Re Wansbeck Railway*, L.R. 1 C.P. 269.

PRINCIPAL MANSION HOUSE. A house of moderate size on settled land, occupied by a tenant for life in preference to a huge one which he could not keep up and which was let as a school, was held to be the principal mansion house for the purposes of the Admiralty Court Act 1860 (c.18) (*Re Feversham Settled Estate*, 82 S.J. 333).

See *MANSION*; *FAMILY MANSION*.

PRINCIPAL MONEY. A testator possessed of a small amount of cash, but of considerable other property both real and personal, gave as follows: "I desire that the income arising from my principal money shall be paid to my wife, while unmarried, for the support of herself and the education of my children, and, at her death or on her marriage, to be divided between them"; held, that all the personalty, including leaseholds, passed, but not the realty (*Pritchard v Pritchard*, L.R. 11 Eq. 232).

See MONEY; PRINCIPAL SUM.

PRINCIPAL OBJECTS. See OBJECTS.

PRINCIPAL OFFICE. The "principal office" of a company (Companies Clauses Consolidation Act 1845 (c.16) s.135; Railway Clauses Consolidation Act 1845 (c.20) s.138) was the place at which the business of the company was managed and controlled as a whole (*Garton v Great Western Railway*, 27 L.J.Q.B. 375; *Palmer v Caledonian Railway* [1892] 1 Q.B. 823; *Clokey v London & North Western Railway* [1905] 2 I.R. 251). See further CARRY ON; RESIDE.

PRINCIPAL OFFICER. The manager of a receiver in a debenture-holder's action, who was also one of two joint liquidators of the petitioning company, was held by Williams J. to be a "principal officer" of that company as regards the affidavit verifying a petition by that company for the compulsory winding-up of another company, within r.36 of the Company Winding-up Rules 1890 (*Re Review Publishing Co* [1893] W.N. 5). Cp. "Head Officer", under OFFICER. See Companies (Winding-up) Rules 1949 r.30. Rule 30 cannot be by-passed by granting a power of attorney to a divisional manager (*Re Vic Groves & Co* [1964] 1 W.L.R. 956).

PRINCIPAL SECURITY. "Principal or primary security": see SECURITY FOR MONEY.

PRINCIPAL SUM. Where a covenant of indemnity is given as a collateral security for principal and interest secured by a mortgage, and to the covenant there is a proviso that "no greater principal sum shall be ultimately recoverable under or by virtue hereof than the principal sum of", e.g. £3,000—the phrase "principal sum" in such a proviso does not mean "no greater sum in respect of the principal secured by the mortgage", but means the amount to be recovered under the indemnity; so that, if after realising the property mortgaged, there remain, e.g. £2,047 7s. 6d. due for arrears of interest and £6,175 for principal in respect of the mortgage debt, the amount recoverable under the indemnity is not the £3,000 plus the arrears of interest but the £3,000 and no more (*Miller v Miller*, cases lodged in H.L. Sess. 1886).

As to the phrase "principal sum" in a power of appointment, see *Samuda v Lousada*, 7 Bea. 243.

See PRINCIPAL MONEY.

PRINCIPAL VALUE. Stat. Def., Finance Act 1894 (c.30) s.7(5)). See *Ellesmere (Earl of) v Inland Revenue Commissioners* [1918] 2 K.B. 735; *Att-Gen v Coole* [1921] 3 K.B. 607; *Re Marquess of Abergavenny* [1924] A.C. 385.

PRINCIPALLY. That Clifford's Inn might be used "principally for that purpose, intent, and consideration"—i.e. "for the furtherance of the practisers and students of the common lawes of this realm"—was a reason for holding that the conveyance of Clifford's Inn founded a charity, namely a school for learning the law (*Smith v Kerr* [1902] 1 Ch. 774, cited CHARITY).

A condition annexed to land registered in a land registry might be modified by the court on proof "that such modification will be beneficial to the person principally interested in the enforcement of such condition" (Land Transfer Act 1875 (c.87) s.84).

PRINCIPLE

Consent of the persons “principally interested”, who were competent to consent, would have been accepted; but “what the difference is between ‘interested’ and ‘principally interested’, at present, I do not understand”; the phrase at least included “all persons who have bought with notice of the conditions”; and, where the consent of these was not given, “the court has to be satisfied that the modification will be ‘beneficial’ . . . that must be construed strictly”, and merely showing that the proposed modifications could not do these persons any harm would not have sufficed (per Kekewich J., *Ground Rent Development Co v West* [1902] 1 Ch. 674).

PRINCIPLE. “Principle” in science “is equivocal; it may denote (1) either the radical, elementary, truths of a science, or (2) those consequential axioms which are founded on radical truths, but which are used as fundamental truths by those who do not find it expedient to have recourse to first principles” (per Rooke J., *Boulton v Bull*, Bl. H. 478; see further per Lawrence J., *Hornblower v Boulton*, 8 T.R. 106).

“A principle denotes a general guiding rule and has no reference to specific directions which vary according to the subject matter” (per Shearman J. in *McCreagh v Frearson*, 91 L.J.K.B. 365).

The “principles” of the Treaty of Waitangi Act 1975 (No.114) were the underlying mutual obligations and responsibilities, reflecting the intent of the Treaty as a whole, and included the obligation by the Crown to protect and preserve the Maori language (*New Zealand Maori Council v Att-Gen of New Zealand* [1994] 2 W.L.R. 254).

PRINCIPLE OF LEGALITY. “As for the ‘principle of legality’, this vague but popular expression is generally taken to denote the requirement that fundamental rights may only be curtailed or abrogated by clear statutory words.” – (*Public Law Project v The Lord Chancellor* [2015] EWCA Civ 1193); “It is the public policy of the common law to interpret restrictively statutory provisions which appear to interfere with fundamental rights. I understood him to be referring to dicta such as that of Lord Hoffmann in *R v Secretary of State for the Home Department, Ex p Simms* [2000] 2 AC 115, 131E-F, where he said: ‘[T]he principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document’.” (*Ahuja v Politika Novine I Magazin D.O.O* [2015] EWHC 3380 (QB).)

PRINT. Printed words in a printed form, which are inconsistent with its written emendations, usually yield to the written words (Elph. 18; per Herschell C. and Lord Halsbury, *Glynn v Margetson* [1893] A.C. 351; *The Nifa* [1892] P. 411; per Wright J., *Dunlop v Balfour* [1892] 1 Q.B. 507, citing *Gray v Carr*, 40 L.J.Q.B. 257; per Bigham J., *Western Assurance v Poole* [1903] 1 K.B. 383, cited TOTAL LOSS).

“Printing”: Stat. Def., Lotteries and Amusements Act 1976 (c.32) s.23.

See WRITING; ENGRAVING.

PRINT WORKS. See *Hardcastle v Jones*, 7 L.T. 322, and *Hoyle v Oram*, 31 L.J.M.C. 213, cited EMPLOYED; NON-TEXTILE FACTORIES.

PRIOR ESTATE. "Owner of the prior estate" (Fines and Recoveries Act 1833 (c.74) s.22): see OWNER.

PRIOR INCUMBRANCER. A judgment creditor is a "prior incumbrancer" within the proviso to Real Property Limitation Act 1833 (c.27) s.42 (per Lord St. Leonards, *Henry v Smith*, 2 Dr. & War. 381); but outstanding charges assigned to a trustee for a purchaser of the equity of redemption are not within the exception (*Chinnery v Evans*, 11 H.L. Cas. 115); nor is a tenant for life such a "prior incumbrancer" as regards a creditor of a remainderman (*Vincent v Going*, 1 J. & La T. 697). See Limitation Act 1939 (c.21) s.18(5).

PRIOR INTEREST. See *Att-Gen v Selborne* [1902] 1 K.B. 388, cited EXTINCTION. "Prior interests" (Trustee Act 1925 (c.19) s.32(1)): see *IRC v Bernstein* [1960] Ch. 444.

PRIOR INVENTOR. See FIRST INVENTOR.

PRIOR PUBLICATION. See PUBLICATION.

PRIOR USER. See ANTICIPATION; PUBLIC USE.

PRIOR WRITTEN AGREEMENT. (State Immunity Act 1978 (c.33) s.2(2).) ("A State may submit . . . by a prior written agreement . . .") A solicitor's letter expressing an opinion for the benefit of the official to whom it was addressed and which was not an agreement in writing between an employee and the government nor an agreement purporting to submit to the jurisdiction of the English courts did not amount to a "prior" written agreement" within the meaning of s.2(2) of the 1978 Act (*Ahmed v Government of the Kingdom of Saudi Arabia* [1996] I.C.R. 25).

PRIORITY. See DEPENDANT.

PRISAGE. "'Prisage' is that part or portion that belongs to the King of such merchandises as are taken at sea by way of lawfull prize. And this word you shall finde in the statute of [Penal Statute of 1588] (31 Eliz., c.5)" (Termes de la Ley; see further PRIZE).

"Prisages of wines, mentioned in the statutes of [Customs Act 1509] (1 Hen. 8, c.5), is a custome by which the King out of every barke laden with wine under 40 tunne, claims to have two tun at his own price" (Termes de la Ley).

See further Cowel; Hale, *Concerning Customs*, Ch. 2 et seq.; Jacob; 10 Encyc. 402.

As to customary, as distinguished from prerogative, prisage, see Hale, *De Portibus Maris*, Ch. 6.

PRISON. "Every place where any person is restrained of his liberty is a prison; as, if one take sanctuary and depart thence, he shall be said to 'break prison'" (*Hobert and Stroud's Case*, Cro. Car. 210); so, of a place where you are only at liberty on parole (*Hobert and Stroud*); so, where "un fuit mis in les cippes come suspect de felony, et la vient un autre que luy lessa aler alarge—ces est felony per common ley, *de frangentibus prisonis*" (Dyer, 99, pl. 60). See further GAOL; IMPRISONMENT. Probably a fuller definition of "prison" is "a place of restraint for the safe custody of a person to answer any action, personal or criminal" (Cowel), or of a person convicted of an offence or who for any cause is legally ordered into confinement. See further 2 Hawk. P.C. Ch. 18, s.4; 10 Encyc. 402–404; BREAK OUT; ESCAPE; RESCUE; PRISONER.

Stat. Def., Prison Act 1952 (c.52) s.53; see thereon *Prison Commissioners v Middlesex*, 9 Q.B.D. 506.

"In prison or in custody for debt": see *Re Stoffel*, 3 Ch. 240

A magistrates' court is not a "prison or other institution" for the purposes of s.39 of the Prison Act 1952 (c.52) (*R. v Moss and Harte* (1986) 82 Cr.App.R. 116).

PRISONER

Stat. Def., Sexual Offences (Protected Material) Act 1997 (c.39) s.2(1).

Stat. Def., s.4(9) of the Regulation of Investigatory Powers Act 2000 (c.23).

Stat. Def., Criminal Justice Act 1982 (c.48) s.52.

Stat. Def., Coroners and Justice Act 2009 s.136.

“Life Prisoner”: see LIFE PRISONER.

See ORDINARY PRISON; PUBLIC PRISON; CERTIFIED; CONVICT.

PRISONER OF WAR. “Prisoner of War” (Geneva Convention 1949). Nationals of the detaining power are not entitled to the protection of this Convention as “prisoners of war” (*Public Prosecutor v Oie Hee Koi* [1968] A.C. 829). Nor are members of the enemy forces if captured in civilian clothes (*Osman Bin Haji Mahamed Ali v Public Prosecutor* [1969] 1 A.C. 430).

As to the application of the status of a prisoner of war to a person fighting for the Taliban in Afghanistan against international forces see *New Law Journal*, February 1, 2002, p.131. See also ENEMY ALIEN.

See IMPRISONMENT; PRISON; CIVIL PRISONER; CRIMINAL PRISONER; MAINTENANCE.

PRIVACY. “Unwarranted infringement of privacy” (Broadcasting Act 1990 (c.42) s.143(1)(b)). A broadcast can still be an infringement of privacy within the meaning of this section notwithstanding that the matter broadcast had previously been reported and was in the public domain (*R. v Broadcasting Complaints Commission, Ex p. Granada Television, The Times*, May 31, 1993).

PRIVATE. “Lord Woolf . . . used the description ‘private’ and ‘secret’ to reflect the distinction expressed in the traditional terms ‘in chambers’ and ‘in camera’. However the CPR discards these terms and in my view uses the word ‘private’ in a sense corresponding with Lord Woolf MR’s description ‘secret’.” (*Economic Department of City of Moscow v Bankers Trust Co* [2004] 3 W.L.R. 533 at 544, CA per Mance L.J.)

PRIVATE ACT. As to the nature of the obligations contained in a private Act, see *Corbett v South Eastern & Chatham Railway* [1905] 2 Ch. 280, reversed [1906] 2 Ch. 12; *Re Wilton* [1907] 1 Ch. 50.

See PUBLIC ACT; LOCAL ACT OF PARLIAMENT; SEWER; 5 Cru. Dig. Title 33.

PRIVATE BILL. For the purposes of the Parliamentary Costs Act 1865 (c.27), “private bill” extends to and includes “any Bill for a local and personal Act” (s.10).

PRIVATE BRANCH RAILWAY. See *Lancashire Brick Co v Lancashire & Yorkshire Railway*, 71 L.J.K.B. 434, cited RAILWAY.

PRIVATE BRIDGE. “A distinction between a public and a private bridge is taken in 2 Inst. 701, and made to consist principally in the former being built for the common good of all the subjects as opposed to a bridge made for private purposes; and the instance put of a private bridge is a ‘bridge to a mill, which A was bound to maintain over which B had passage’” (per Ellenborough C.J., *R. v Bucks*, 12 East 202). See PUBLIC BRIDGE.

PRIVATE CAR. Cars used for business purposes were not “private cars” within the terms of a lease of a garage for the standing of two “private cars” only (*Bell v Alfred Frank & Bartlett Co* [1980] 1 All E.R. 356).

PRIVATE CHARITY. See CHARITABLE PURPOSE.

PRIVATE CLUB. See CLUB.

PRIVATE COMPANY. See *Park v Royalties Syndicate Ltd* [1912] 1 K.B. 330; *Re White* [1913] 1 Ch. 231, where it was held that although a company might be a private

company within the meaning of s.121 of the Companies (Consolidation) Act 1908 (c.12), it was still a public company for the purposes of the Apportionment Act 1870 (c.35)

Stat. Def., Companies Act 1985 (c.6) s.1; Companies Act 2006 s.4.

PRIVATE DEBTS. See *Re Fleck, Colton v Roberts*, 37 Ch. D. 677.

PRIVATE DWELLING-HOUSE. A covenant requiring a building to be used as a "private" dwelling-house, or residence, only, is broken by its being used as a school, or dancing academy (*Wickenden v Webster*, 25 L.J.Q.B. 264), or as an adjunct to a school, by taking in the governesses, and some pupils on ordinary paying terms (*Hobson v Tulloch* [1898] 1 Ch. 424), or as an institution for educating the daughters of missionaries, or as a club (*German v Chapman*, 7 Ch. D. 271), or as an hotel or lodging-house (*Rolls v Miller*, 27 Ch. D. 71), or for taking in paying guests (*Tendler v Sproule* [1947] 1 All E.R. 193), or by using it as an office for receiving orders, putting a trade-blind in one of the windows, e.g. "coal office" (*Wilkinson v Rogers*, 12 W.R. 119, 284; see also *Evans v Davis*, 10 Ch. D. 747); but a public auction of the furniture of the house is not a breach of such a covenant (*Reeves v Cattell*, 24 W.R. 485; see further AUCTION). It is a breach of covenant to sublet part of the house (*Dobbs v Linford* [1953] 1 Q.B. 48).

Probably it is not a breach of such a covenant (nor of one not to let any part of the premises for "lodgings") for the lessee to have a friend to live with him, not for profit but to lighten by sharing the housekeeping expenses (*Porter v Gibbons*, 48 S.J. 559, 814).

A covenant that every house to be erected shall be "adapted for and used as and for a private residence only" is broken by the erection of a block of residential flats (*Rogers v Hosegood* [1900] 2 Ch. 388, cited HOUSE). See A.

An art studio erected away from the house in such a way as not to be an adjunct thereto is a breach of a covenant that only "private dwelling-houses" shall be erected (*Patman v Harland*, 17 Ch. D. 353); so is the erection of a wall (*Bowes v Law*, L.R. 9 Eq. 636); so of an ordinary railway embankment with a railway upon it or (semble) a railway (*Long Eaton Recreation Grounds Co v Midland Railway* [1902] 2 K.B. 574, cited BUILDING); *secus*, of a stable with a bedroom over it (*Russell v Baber*, 18 W.R. 1021), or even a stable having no bedroom over it, if used solely as an adjunct to the private house, and so of such other mere adjuncts as a greenhouse, summer-house, a garden tool-house (*Blake v Marriage*, 37 S.J. 633).

Though Queen Anne's Mansions, London, or St. James' Club, Piccadilly, may be a dwelling-house after a fashion (see *Rolls v Miller*, 53 L.J.Ch. 682, cited DWELLING-HOUSE), yet neither was a "private dwelling-house", within the exception in Public Health (London) Act 1891 (c.76) s.24(b), and therefore the chimneys of either were not entitled to send forth black smoke with impunity (*McNair v Baker* [1904] 1 K.B. 208).

"Private dwelling-house" entitled to water for domestic purposes, under a Water Act, "denotes, according to the ordinary use of language, the house in which a man lives as his home, as distinguished from a house which he uses only for business purposes" (per Lord Low, *Airdrie Water Trustees v Flanagan*, 43 S.L.R. 429); but in that case Lord Stormonth Darling was of opinion that "private" did not add any force to "dwelling-house" and that a "dwelling-house" might, in such a connection (as was said by Lindley L.J. in *Cooke v New River Co*, 38 Ch. D. 56, cited DWELLING-HOUSE), denote any "house, in which water is required for domestic purposes"; but see *Bristol*

Guardians v Bristol Waterworks Co [1914] A.C. 379, in which it was held that a public workhouse and homes for pauper children belonging to a corporation were not private dwelling-houses entitled to a supply of water for domestic purposes under a Water Act.

A covenant in a lease to use a house as a "private dwelling-house only" is violated if the lessee, without consent, by means of structural alterations converts the premises into flats (see *Day v Waldron*, 88 L.J.K.B. 937); or lets the house in separate tenements (see *Berton v Alliance Economic Investment Co* [1922] 1 K.B. 742, 738).

"Private dwelling" (Housing Act 1957 (c.56) Sch.2 Pt II para.4(2)) does not include occupation by a company (*G. E. Stevens (High Wycombe) v High Wycombe Corp* [1962] 2 Q.B. 547).

Where the ground-floor rooms were let to a tenant while the owner occupied as upstairs room, that part of the house let to the tenant was held to be occupied as a "private dwelling" within the meaning of the Housing Act 1969 (c.33) Sch.5 para.3(1) (*Hunter v Manchester City Council* [1975] Q.B. 877).

"Private dwelling-house" in the National Insurance Act 1965 (c.51) s.90 means a building occupied as a home at the material time. The intended future use as such of a property undergoing construction or conversion does not make it a "private dwelling-house" within the meaning of this section (*Stott v Hefferon* [1974] 1 W.L.R. 1270).

"Private dwelling" (General Rate Act 1967 (c.9) s.115(1)). Furnished flats with certain communal rooms let for holiday occupancy were not "used . . . for the purposes of . . . private dwellings" (*Skittrall v South Hams DC* (1976) 75 L.G.R. 107).

A house being used to accommodate former mental in-patients being returned to the community was not being used as "a private dwelling house" contrary to the terms of a restrictive covenant (*C&G Homes v Secretary of State for Health* [1991] 2 W.L.R. 715).

Stat. Def., "does not include any garage or other structure occupied with the dwelling house, or any land appurtenant to the dwelling house" (s.59 of the Police Reform Act 2002 (c.30)).

Stat. Def., Clean Air Act 1956 (c.52) s.34(4); Control of Pollution Act 1974 (c.40) s.30.

See BUILDING; DWELLING-HOUSE; HOUSE; PRIVATE HOUSE; RESIDE.

PRIVATE ESTATES. The "private estates of Her Majesty, her heirs or successors": see Crown Private Estates Act 1862 (c.37) s.1.

PRIVATE FOUNDATION. See *R. v Runciman*, 28 L.R. Ir. 527, 551, 558, 566; cp. PRIVATE ENDOWMENT. See FOUNDATION.

PRIVATE FRIEND. If a licensed person supplied on his premises a dinner to the order of A, the guests at which stopped till closing time, the licensed person could not convert any of such guests into his own "private friends" so as to come within the exception of Licensing Act 1874 (c.49) s.30, although it be clearly proved that he bona fide entertained them after closing house at his own expense (*Corbet v Haigh*, 5 C.P.D. 50).

Servants of a licensee are not his "private friends" within s.100 of the Licensing Act 1953 (c.46) (*Schofield v Jones* [1955] 1 W.L.R. 1133).

PRIVATE GAIN. "Purposes of private gain or purposes of any commercial undertaking" (Small Lotteries and Gaming Act 1956 (c.45) ss.1(1), 4; see Gaming Act 1968 (c.65) s.41): an association whose objects were to preserve and protect the interests of ratepayers was not established for such "purposes" (*Bishopbriggs and*

District Ratepayers' Association v Lanark CC, 1959 S.L.T. (Sh. Ct.) 5; 75 Sh. Ct. Rep. 3). Where the proceeds of a lottery were paid into the general funds of the society organising the lottery, this was an application for purposes of private gain (*Payne v Bradley* [1962] A.C. 343).

"Private gain" (Betting and Gaming Act 1960 (c.60) s.17(2); Betting, Gaming and Lotteries Act 1963 (c.2) s.33(2)(c); see Gaming Act 1968 (c.65) ss.33, 34). Where part of the profit from gaming machines in a club was paid into the club's general funds it was applied for purposes of "private gain" (*Cookson v Bowles* [1962] 1 W.L.R. 754). See also *Avais v Hartford Shankhouse Workingmen's Social Club* [1969] 2 A.C. 1.

Stat. Def., Lotteries and Amusements Act 1976 (c.32) s.22 Sch.4.

PRIVATE GAMING AND BETTING. Stat. Def., Gambling Act 2005 (c.19) Sch.15.

PRIVATE GARAGE. Stat. Def., General Rate Act 1967 (c.9) Sch.11 para.2(b).

PRIVATE HIRE. Private hire of a car in an insurance policy means hiring a vehicle for a defined journey at a defined time (*Lyons v Denscombe* [1949] 1 All E.R. 977).

PRIVATE HIRE VEHICLE. (Local Government (Miscellaneous Provisions) Act 1976 (c.57) s.80(1).) A vehicle was operated as a "private hire vehicle" within the meaning of this section, notwithstanding that there was no payment of money, when the operator, being understaffed, asked his wife to drive pre-booked customers in her car. It was sufficient that he had obtained a commercial benefit by protecting the goodwill of the business (*St. Albans DC v Taylor* [1991] Crim.L.R. 852).

Stat. Def., Private Hire Vehicles (London) Act 1998 (c.34) s.1(1)(a). See also HACKNEY CARRIAGE.

"What is a hackney carriage? What is the meaning of the aphorism 'a hackney carriage is always a hackney carriage once it has been licensed'? Is a vehicle licensed as a hackney carriage by local authority A a hackney carriage while on the road in the area of local authority B (specifically, on the facts of the present case, is a vehicle licensed as a hackney carriage by Berwick-upon-Tweed Borough Council a hackney carriage while on the road in the area of Stockton-on-Tees Borough Council)? Does a vehicle licensed as a hackney carriage by local authority A require to be licensed as a private hire vehicle by local authority B if used for private hire in the area of local authority B (specifically, on the facts of the present case, does a vehicle licensed as a hackney carriage by Berwick-upon-Tweed Borough Council require to be licensed as a private hire vehicle by Stockton-on-Tees Borough Council if used for private hire in the area of Stockton-on-Tees Borough Council)? What is the meaning of the phrase 'hackney carriage' when used in the definition of 'private hire vehicle' in section 80(1) of the Local Government (Miscellaneous Provisions) Act 1976? ... In law, however, there are only two relevant types. As a matter of law all such vehicles are either 'hackney carriages' or 'private hire vehicles'. (The Transport Act 1980 and the Transport Act 1985 use the expression 'taxi' and some legislation relating to London, including the London Cab Act 1896, the London Cab and Stage Carriage Act 1907 and the London Cab Act 1968, uses the expression 'cab', but in each case the expression is so defined as to take one back to the statutory definitions of 'hackney carriage'.) I shall return in due course to consider the statutory definitions of 'hackney carriage' and 'private hire vehicle'" (*Stockton-On-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin)).

PRIVATE HOTEL. A private hotel is "a dwelling-place for persons who wish to live there" (per Stirling J., *Devonshire v Simmons*, 39 S.J. 60). See HOTEL.

PRIVATE

PRIVATE HOUSE. An unconsecrated proprietary chapel into which strangers are admitted is not a “private house” within the 71st of the Canons Ecc., 1604; and to read the church service in such a building is a public reading (*Barnes v Shore*, 1 Rob. Ecc. 382). Cp. PRIVATE CHAPEL.

See PRIVATE DWELLING-HOUSE; IN PUBLIC.

PRIVATE INDIVIDUAL. “The concepts of ‘products acquired by private individuals for their own use’ in art.8 [of Council Directive 92/112/EEC] and ‘products . . . held for commercial purpose’ in art.9 of the Directive are antithetical, in the sense that, if an individual acquires (or having acquired for his own use subsequently decides to hold) products for a purpose other than his own use, such products are to be regarded as held for commercial purposes. . . . We record that we are not concerned with the precise scope of the concept ‘for his own use’. The commissioners accept that it must receive a sensible interpretation. They accept, in particular, that it is not confined to situations where the private individual himself intends to consume the goods. So, for example, they accept that a private individual who travels abroad in order to stock up for his or her dinner table or a party which he or she is giving is acquired for his own use. Likewise, we would suppose, in the case of an acquisition destined as a present for a relative or friend.” (*R. (Hoverspeed Ltd) v Commissioners of Customs and Excise* [2003] 2 W.L.R. 950, CA; [2003] 2 All E.R. 553, CA.)

See also COMMERCIAL.

PRIVATE INFORMATION. Stat. Def., “in relation to a person, includes any information relating to his private or family life” (s.26(10) of the Regulation of Investigatory Powers Act 2000 (c.23)).

PRIVATE INTEREST. Stat. Def., Town and Country Planning Act 1971 (c.78) s.268(4).

PRIVATE INVESTOR. Stat. Def., Financial Services Act 1986 (Restriction of Right of Action) Regulations 1991 (SI 1991/489).

PRIVATE LEGAL INSTRUMENT. Stat. Def., Marriage (Same Sex Couples) Act 2013 Sch.4.

PRIVATE LEGISLATION. Stat. Def., includes provisional order, Confirmation Bill relating to provisional order, and local or personal Bill (Local Government etc. (Scotland) Act 1994 (c.39) s.121(4)).

PRIVATE LIFE. “Huntsmen and women are taking part in what they know is not just a private activity, but a much admired public spectacle. I therefore conclude that they are not entitled to the protection for their private life in article 8(1).” (*R. (Countryside Alliance) v Attorney General* [2007] UKHL 52 per Lord Rodger at [108].)

The concept of “private life” in art.8 of the European Convention on Human Rights covers the physical and moral integrity of the person, including his or her sexual life (*R. v G.* [2008] UKHL 37).

“71.The concept of private life under the European Convention is amorphous and lacks clear definition. It is however clear – from the cases upon which Mr Dixon relies, and others – that it is not restricted to personal privacy and the right to keep oneself to oneself. The right to lead one’s life as one chooses, including the right to relate socially with others of one’s choice, are all elements in the overarching right. Consequently, as a concept, ‘private life’ goes beyond what might be regarded as the purely private sphere into business or professional activity, because the private and

business/professional spheres may coalesce and/or moving into those spheres may be essential for people to achieve personal fulfilment. 72. However, the law recognises that the extent to which private life protection can move into these spheres is limited in extent. For example, art.8 does not afford a right to work generally, nor a right to work in a particular job or profession (*R (Countryside Alliance) v HM Attorney General* [2007] UKHL 52 at [15(4)] per Lord Bingham). Whether article 8 is engaged will depend upon the circumstances of the particular case.” (*Prescott, R (on the application of) v General Council of the Bar* [2015] EWHC 1919 (Admin).)

PRIVATE LOTTERY. (Betting and Lotteries Act 1934 (c.58) s.24(1); now Betting, Gaming and Lotteries Act 1963 (c.2) s.44(1).) A lottery held among the ward or borough branches of the London District of the Communist party is not a private lottery (*Keehan v Walters*, 62 T.L.R. 483); nor is one held by the National Cyclists’ Union (*Hudson v Chamberlain* [1948] W.N. 501).

Lotteries run by football club supporters’ clubs have been held not to be “private lotteries” within the meaning of these sections (*Maynard v Williams* [1955] 1 W.L.R. 54; *Pearse v Hart* [1955] 1 W.L.R. 67 fn).

Stat. Def., Lotteries and Amusements Act 1976 (c.32) s.4.

PRIVATE PAPERS. A bequest of the “private papers” of Charles Dickens was held to include the manuscript of an unpublished work, as well as letters, diaries, memoranda and the like (*Re Dickens, Dickens v Hawksley* [1935] Ch. 267).

PRIVATE PARTY. Road Traffic Act 1930 (c.43) s.61(2): one convened by personal invitation. A party open to the general public of a local community could not be a private party (*Macmillan v Western Scottish Motor Traction Co* (1933) S.C. (J) 51). See also *Reynolds v GH Austin & Sons* [1951] 2 K.B. 135; *Victoria Motors (Scarborough) v Wurzel* [1951] 2 K.B. 520.

The presence of two non-members, the prosecutor and a traffic examiner, prevented a club outing by coach from being a “private party” under this section, even though their presence was unknown to the driver (*Browning v Watson* [1953] 1 W.L.R. 1172).

PRIVATE PERSON. For discussion of the concept of ‘private person’ in the context of the Financial Services and Markets Act 2000 s.150 see *Bailey v Barclays Bank Plc* [2014] EWHC 2882 (QB).

PRIVATE POLICYHOLDER. (Policy Holders Protection Act 1975 (c.75) s.6(7)(b).) A partnership does not qualify as a private policyholder if a member of the partnership is a corporate partner (*Scher v Policyholders Protection Board (No.2); Ackman v Same (No.2)* [1993] 3 W.L.R. 1030).

PRIVATE PROFIT. (Copyright Act 1911 (c.46) s.2(3).) A performance can be for the “private profit” of a local authority, although the profits from the performance in fact go to the relief of the ratepayers (*Performing Right Society v Bray Urban DC* [1930] A.C. 377).

PRIVATE PURCHASER. “Private purchaser” (Hire Purchase Act 1964 (c.53) s.29(2)). A person who carries on a part-time business of buying and selling motor cars is a “trade or finance purchaser” as defined by s.29(2) and is not within the protection given by s.27 to a “private purchaser”, even where he acquires a vehicle in his private capacity for his own use (*Stevenson v Beverley Bentinck* [1976] 1 W.L.R. 483). See also *Sonoco v Barcross Finance* [1978] R.T.R. 444.

PRIVATE

"I do not think that a person is necessarily to be regarded as a private purchaser simply because he has not previously bought motor vehicles with a view to selling them in the way of business." (*GE Capital Bank Ltd v Rushton* [2005] EWCA Civ 1556 per Moore-Bick L.J. at para.39.)

PRIVATE RESIDENCE. A house in which there was a paying guest who shared family life would not, except in exceptional circumstances, be anything other than a "private residence" (*Segal Securities v Thoseby* [1963] 2 W.L.R. 403).

Stat. Def., Development Land Tax Act 1976 (c.24) s.14(2).

See PRIVATE DWELLING-HOUSE.

PRIVATE ROAD. The definition of "street" in Public Health Act 1875 (c.55) s.4 includes a private road (*Hill v Wallasey* [1894] 1 Ch. 133). See *Re Windham's Settled Estate* [1912] 2 Ch. 75. See Public Health Act 1936 (c.49) s.343. See ROAD.

PRIVATE SEWER. Stat. Def., Public Health Act 1936 (c.49) s.343(1).

PRIVATE STREET. Stat. Def., Highways Act 1980 (c.66) s.203(2).

See STREET.

PRIVATE STUDY. (Copyright Act (Singapore) ss.35 and 39.) "Study" meant the devotion of time and attention to acquiring information or knowledge. "Private" meant being kept or removed from public knowledge, even if the purpose were commercial in nature (*Aztech Systems Pte Ltd v Creative Technology Ltd* [1996] F.S.R. 54).

PRIVATE TELECOMMUNICATION SYSTEM. Stat. Def., s.2(1) of the Regulation of Investigatory Powers Act 2000 (c.23).

PRIVATE TENANT. Stat. Def., Housing Finance Act 1972 (c.47) s.19(4).

PRIVATE USE. For the purpose of the Telegraph Act 1869 (c.73) s.5: see *Postmaster-General v National Telephone Co* [1908] 2 Ch. 172; reversed House of Lords [1909] A.C. 269.

Stat. Def., Finance Act 1976 (c.40) s.72(5)(f); Town and Country Planning Act 1984 (c.10) s.5(6).

PRIVATE VEHICLE. (Finance Act 1976 (c.40) s.72(5)(a)(ii).) A motor vehicle that was specially equipped and fitted with a flashing blue light, and that a country fire officer was provided with and required to use, was "a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used" for the purposes of this section, and was not, therefore, a "car" (*Gurney v Richards* [1989] 1 W.L.R. 1180).

Stat. Def., s.48(1) of the Regulation of Investigatory Powers Act 2000 (c.23).

Stat. Def., Public Passenger Vehicles Act 1981 (c.14) s.48.

PRIVATE WAY. See WAY; EASEMENT.

PRIVATE YACHT. "Used exclusively as a private yacht" (General Regulations of Board of Customs, August 31, 1895, reg.3): see *Att-Gen v Hunter* [1949] 2 K.B. 111.

PRIVATELY. "Privately" (Patents Act 1977 (c.37) s.60(5)) is not synonymous with secretly, so that experiments done in the High Court or Patent Office could be done "privately" for the purposes of this section (*Smith Kline Laboratories v Evans* [1989] F.S.R. 513).

PRIVILEGE. "Privileges" are liberties and franchises granted to an office, place, towne, or mannor, by the Kings great charter, letters patents, or Act of Parliament: as toll, sake, socke, infangtheefe, outfangtheefe, turne, or delfe, and divers such like" (*Termes de la Ley*). See further Cowel; Jacob; FRANCHISE.

A "privilege", e.g. Friendly Societies Act 1875 (c.60) s.15(7), is an advantage conferred "over and above the ordinary law" (per Esher M.R., *Re Miller* [1893] 1 Q.B. 327); cp. *Winnipeg v Barrett* [1892] A.C. 445, cited PRACTICE. See Friendly Societies Act 1896 (c.25) s.35.

"Privilege" (R.S.C. Ord.31 r.19(a)(2), now Ord.24 r.13) is not used in a narrow sense, but extends to every case in which inspection is sought to be resisted on any ground whatsoever (*Ehrmann v Ehrmann* (No.2) [1896] 2 Ch. 826).

"Privilege, servitude, or easement": see *Ramsay v Blair*, 1 App. Cas. 701.

"Easement, right, or privilege" (Settled Land Act 1925 (c.18) s.41): see *Re Sitwell* [1905] 1 Ch. 460, cited SURFACE.

"Right and privilege" of a loan or strip of land: see *Reid v Haldane's Trustees*, 28 S.L.R. 511, cited LOAN.

"Privileges and conditions", in a power enabling a company to create new capital with such "privileges and conditions" as may be thought fit, are words of extensive meaning and authorise the issue of preference shares as regards capital and dividend (*Harrison v Mexican Railway*, L.R. 19 Eq. 358; see as to that case, *Re South Durham Co*, 31 Ch. D. 261).

In a shipping contract whereby the captain was to receive a stipulated sum in lieu of "privilege and primage", Gibbs C.J., regarding "privilege" of so indeterminate a signification, received evidence of conversations between the parties to show in what sense they had used the word (*Birch v Depeyster*, 1 Stark. 210).

"Privileges, rights and advantages appertaining or reputed to appertain to the land", as regards Conveyancing Act 1881 (c.41) s.6 (see Law of Property Act 1925 (c.20) s.62(1)): see *White v Williams*, 91 L.J.K.B. 721.

A privilege (Law of Property Act 1925 (c.20) s.62) is some advantage to an individual or group of individuals. It is a right enjoyed by a few as opposed to a right enjoyed by all (*Le Strange v Pettefar*, 161 L.T. 300).

"Benefit and Privileges" (Legal Aid): see BENEFIT.

PRIVILEGED COMMUNICATION. As regards defamation, "the proper meaning of 'privileged communication' is only this—that the occasion on which the communication was made rebuts the inference *prima facie* arising from a statement prejudicial to the character of the plaintiff, and puts it upon him to prove that there was malice in fact, i.e. that the defendant was actuated by motives of personal spite or ill-will, independent of the occasion on which the communication was made" (per Parke B., *Wright v Woodgate*, 2 Cr. M. & R. 577, cited *Jenoure v Delmege* [1891] A.C. 78). See also *Turner v Metro Goldwyn-Meyer Pictures* [1950] 1 All E.R. 449.

The broad principle is: "A communication made bona fide upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contain criminary matter which, without this privilege, would be slanderous and actionable" (per Campbell C.J., delivering the judgment, *Harrison v Bush*, 25 L.J.Q.B. 29); see further *Nevill v Fine Arts Insurance* [1897] A.C. 68; *Stuart v Bell* [1891] 2 Q.B. 341; *Hunt v Great Northern Railway* [1891] 2 Q.B. 189; *Pullman v Hill* [1891] 1 Q.B. 524; *Clark v Molyneux*, 3 Q.B.D. 237. See also *Sadgrove v Hole* [1901] 2 K.B. 1; *Burr v Smith* [1909] 2 K.B. 306; *Mapey v Baker*, 73 J.P. 289; *Wilson v Purvis*, 28 S.L.R. 76; *Anderson v Hunter*, 28 S.L.R. 324; *Milne v Smiths*, 30 S.L.R. 105; *Ingram v Russell*, 30 S.L.R. 699; *Henderson v Russell*, 33 S.L.R. 14; *Moffat v Coats*, 44 S.L.R. 20; *Roff v British, etc. Co* [1918] 2 K.B. 677. For the rule as to

privileged communications, see the judgment of Lord Macnaghten in *Mackintosh v Dunn* [1908] A.C. 390. See also cases therein cited. As to the privilege which attaches to communications between client and solicitor, see *Jones v Great Central Railway* [1910] A.C. 4, and cases therein cited; *More v Weaver* [1928] 2 K.B. 520; *Conlon v Conlons* [1952] 2 T.L.T. 343. See hereon as to the costs of plaintiff's witnesses, *Brown v Houston* [1901] 2 K.B. 855.

"The law as to judicial privilege has in process of time developed. Originally it was intended for the protection of judges sitting in recognised courts of justice established as such. The object was no doubt that the judges might exercise their functions free from any danger that they might be called to account for any words spoken as justices. The doctrine has been extended to tribunals exercising functions equivalent to those of an established court of justice. In their Lordships' opinion the law on the subject was accurately stated by Lord Esher in *Royal Aquarium and Summer and Winter Garden Society Ltd v Parkinson* [1892] 1 Q.B. 431 at 442, where he says that the privilege 'applies wherever there is an authorised inquiry which, though not before a court of justice, is before a tribunal which has similar attributes. This doctrine has never extended further than to courts of justice and tribunals acting in a manner similar to that in which such courts act'" (per Lord Atkin, [1935] A.C. at 81). The privilege allowed to reports of judicial proceedings does not extend to reports of the proceedings of private tribunals such as the Stewards of the Jockey Club (*Chapman v Ellesmere (Lord)* [1932] 2 K.B. 431).

A Member of Parliament, to whom a written communication is addressed by one of his constituents asking for his assistance in bringing to the notice of the appropriate minister a complaint of improper conduct on the part of some public official acting in that constituency in relation to his office, has sufficient interest in the subject-matter of the complaint to render the occasion of such a publication a privileged occasion (*R. v Rule* [1937] 2 K.B. 375). But this does not mean that the publication of the communication by the Member of Parliament would be privileged (*De Buse v McCarthy* [1942] 1 K.B. 156).

"Professional privilege" (solicitor): see *Minter v Priest* [1930] A.C. 558.

A commanding officer in Her Majesty's forces has an interest in seeing that officers, particularly junior officers, serving under him, do not incur debts which they are unable or unwilling to discharge, and he has, therefore, a common interest with the creditor of one of those officers in the payment of the debt due to the creditor. So, a letter written by the creditor to the commanding officer is written on a privileged occasion. A fortiori, if the motive of the creditor, himself an officer in the Services, is to uphold the honour and reputation of Her Majesty's forces (*Winstanley v Bampton* [1943] 2 K.B. 319).

Discovery: a report of an accident prepared at the request of the defendant's solicitor (as distinct from one prepared without his request and sent to him afterwards when a claim was made) was held privileged (*Ankin v London & North Eastern Railway* [1930] 1 K.B. 527).

A report of a railway accident made by the railway company to the Minister of Transport pursuant to the Regulation of Railways Act 1871 (c.78), and said by the Minister not to be proper to be disclosed to the public, was also held privileged (*Ankin v London & North Eastern Railway* [1930] 1 K.B. 527). The statement of a Minister

that disclosure would not be in the public interest is accepted by the court, whether reasons are given or not (*Ankin*; and see *Duncan v Cammell, Laird & Co* [1942] A.C. 624).

The test whether a communication between a solicitor and his client was privileged was whether the communication or document was made confidentially for the purposes of legal advice. Those purposes had to be construed broadly, so that, where there was a continuum of communication and meetings during which information was passed for the purposes of keeping both parties informed, so that advice could be given and sought, privilege would attach to such communications (*Balabel v Air India* [1988] 2 W.L.R. 1036). Copies of documents sent to a legal adviser to obtain legal advice could be privileged even if the originals were not (*R. v Board of Inland Revenue, Ex p. Goldberg* [1988] S.T.C. 524). But this Divisional Court decision was doubted by the Court of Appeal, which decided that privilege could not be claimed in respect of a copy of an affidavit, taken for the purposes of legal advice, when the original affidavit was not privileged (*Dubai Bank v Galadari* [1989] 3 W.L.R. 1044). Documents held by a solicitor which the client intended to use for a criminal purpose were not "items subject to legal privilege" within the meaning of s.10(2) of the Police and Criminal Evidence Act 1984 (c.60) and ss.27(4)(ii) and 29(2) of the Drug Trafficking Offences Act 1986 (c.32), notwithstanding that the client was the innocent tool of a third party (*R. v Central Criminal Court, Ex p. Francis and Francis* [1988] 3 W.L.R. 989). There was no waiver of privilege where documents prepared for the purposes of civil proceedings were made available for the purposes of criminal proceedings (*British Coal Corp v Rye (No.2)* [1988] 1 W.L.R. 1113). A note made by the plaintiff's solicitor of a telephone conversation between him and the defendant's solicitor, which merely recorded the substance of the conversation and contained nothing in the nature of a communication to the plaintiff, was not a privileged document even if the subject matter of the conversation was "without prejudice" (*Parry v News Group Newspapers* (1990) 140 New L.J. 1719). In deciding whether to order disclosure of documents for which legal professional privilege was claimed, the court had to weigh the public policy on which the privilege was founded, namely, the necessity for a party to be able to make a clean breast to his legal adviser, against the gravity of the charge of fraud or dishonesty made (*Derby v Weldon (No.7)* [1990] 1 W.L.R. 1156). Where a party deployed material in an interlocutory application, privilege could be treated as waived altogether, with the result that the party could not then assert privilege for the same material at the subsequent trial (*Derby & Co v Weldon (No.10)* [1991] 2 All E.R. 908). Legal professional privilege could not be claimed for original documents which were not previously in the possession, custody or power of a party to litigation, actual or contemplated, and which had not come into existence for the purposes of that litigation but which had been obtained by the solicitors of that party for that purpose (*Ventouris v Mountain*, [1991] 1 W.L.R. 607). Letters asserting a claim under an insurance policy and letters written in response by the insurers were not protected by "without prejudice" privilege as at that point there was no dispute (*Standrin v Yenton Minster Homes, The Times*, July 22, 1991). Where a party to litigation would not have been liable to disclose a relevant original document, for example, because he never had it, a copy of that document, secured by that party for the purposes of the litigation, could not be protected from disclosure on the grounds of professional privilege (*Lubrizol Corp v Esso Petroleum* [1992] Gazette, 22 July, 33). Information provided to a social security adjudication officer by a person

applying for benefit was not covered by absolute privilege, and therefore allegations made by an employee against her former employer could be the subject of an action for libel (*Purdew v Seress-Smith* (1992) 136 S.J. (LB) 244). A bank cannot claim legal professional privilege in respect of documents prepared by its auditors in the course of investigating problem loans (*Price Waterhouse (A firm) v BCCI Holdings (Luxembourg) SA* [1992] B.C.L.C. 583). Where proceedings had initially been conducted by a party receiving advice from a firm of personnel consultants, that advice was not privileged from discovery since it was not covered by legal professional privilege (*New Victoria Hospital v Ryan* [1993] I.C.R. 201). Medical reports, obtained confidentially by a plaintiff for the purposes of personal injury litigation, which were inadvertently disclosed on discovery to the defendants could be used by them at the trial. The plaintiff could not rely on his solicitor's mistake to claim that the reports were protected by privilege (*Pizzey v Ford Motor Co, The Times*, 8 March 1993). The mere service of witness statements under an order of the court did not waive privilege in connected documents, (*Balkanbank v Taher, The Times*, 19 February 1994). The paramountcy of a child's interests under the Children Act 1989 (c.41) and the wardship jurisdiction override the legal professional privilege that attaches to a litigant's medical report (*Oxfordshire CC v M., The Times*, 2 November 1993).

Stat. Def., para.8(2) of Sch.10 to the Transport Act 2000 (c.38).

See also WITHOUT PREJUDICE.

See further COURT; FAIR COMMENT; PUBLIC INTEREST; TRIBUNAL; FAIR REPORT; JUDICIAL PROCEEDING; NO GOOD; REPORT.

PRIVITY. "Actual fault or privity", as regards the Merchant Shipping Act 1894 (c.60) s.502: see *Lennards' Carrying Co v Asiatic Petroleum Co* [1923] A.C. 235, cited FAULT; *Royal Exchange Assurance v Kingsley Navigation Co*, 128 L.T. 673; *Beauchamp v Turrell* [1952] 2 Q.B. 207. As regards limitation of liability in respect of Her Majesty's ships, see *The Truculent* [1952] P. 1. See also ACTUAL FAULT.

To establish "privity" on the part of the owners to the fact that a ship had been sent to sea in an unseaworthy state, in order to rely upon s.39(5) of the Marine Insurance Act 1906 (c.41), actual personal knowledge must be shown or at least "turning a blind eye" to the obvious; proof of mere negligence would not suffice (*Compania Maritima San Basilio SA v Oceanus Mutual* [1977] Q.B. 49).

PRIVY. As distinguished from a party, a privy "signifies him that is partaker, or hath an interest, in any action or thing" (Cowel); but a person who has a privity of contract is hardly distinguishable from one who is a party to the contract, for it is a "personal privity" (*Walker's Case*, 3 Rep. 23). See hereon *Bagot Co v Clipper Co* [1901] 1 Ch. 196; [1902] 1 Ch. 146. Other privities are as follows.

"Privity of estate", i.e. where two or more are legally bound together by the same estate in lands or tenements, e.g. lessor and lessee, joint tenants; and the privity lasts only so long as the estate lasts. Thus, an assignee of a leasehold term is a privy in estate with the lessor and liable on the lessee's covenants which run with the land and arise for performance or observance whilst he is assignee; but if he assigns to another, then he is not liable on those covenants so far as they remain to be performed or observed (see Platt Cov. Pt 4, Ch.1, s.5). See hereon *Mercantile Investment Trust v River Plate Trust* [1894] 1 A.C. 578, cited MODIFICATION. Between lessor and lessee there is privity of contract and of estate (*Walker's Case*, above); but between lessor and under-lessee there is no privity at all—not of contract for there is none between them, nor of estate for the the under-lessee's term is one carved out, and different from, that

granted by the lessor; therefore, mortgages of leaseholds are nearly always by sub-demise to prevent the mortgagee from being liable on the lessee's covenants.

"Privity in blood", e.g. heir, or between co-parceners (*Beverley's Case*, 4 Rep. 123; Co. Litt. 271A); see further *Weeks v Birch*, 69 L.T. 759.

"Privity in representation", e.g. executors or administrators (*Beverley's Case*, 4 Rep. 123, 124).

"Privity in tenure", e.g. the lord by escheat (4 Rep. 124).

"Privities in deed, in law, in right": see *Termes de la Ley*, Privie; Co. Litt. 271A. See further *Whittingham's Case* 8 Rep. 42 b, 43 a.

"Actual fault or privity": see ACTUAL FAULT; PRIVACY.

See SUFFICIENT PRIVY; PARTY OR PRIVY. See further EARTH CLOSET.

PRIZE. A prize of war, as distinguished from booty, is a belligerent capture of an enemy's ship or other property at sea (*Beak v Tyrrell*, Carth. 32). See hereon Hall on International Law (4th edn), 473–480, 761–763; *Bolton v Gladstone*, 5 East 155; *Fisher v Ogle*, 1 Camp. 418. See FURTHER PRISAGE.

As to condemnation in prize: see *Schiffahrt-Treuhand GmbH v HM Procurator-General* [1953] A.C. 232.

Betting and Lotteries Act 1934 (c.58) s.26: included football pool winnings (*Bretherton v UK Totalisator Co* [1945] K.B. 555; *Elderton v UK Totalisator Co* [1946] Ch. 57).

Stat. Def., Betting and Gaming Duties Act 1981 (c.63) s.20; Gambling Act 2005 (c.19) ss.6, 14(4) and 239.

PRIZE COMPETITION. Stat. Def. (in effect), Gambling Act 2005 (c.19) s.11.

PRIZE FIGHT. See ASSAULT; AID OR ABET.

PRIZE GAMING. Stat. Def., Gambling Act 2005 (c.19) s.288.

PRO. See PER PROCURATION.

"Pro indiviso proprietors": see JOINT TENANTS.

PRO RATA. This phrase, in a charter-party, may give a claim for demurrage for a fraction of a day: see per Romer L.J., *Yeoman v The King* [1904] 2 K.B. 432.

"At the rate of": see *Atherstone v Bostock*, 10 L.J.C.P. 113, and *Salton v New Beeston Co* [1899] 1 Ch. 775, cited RATE; PER ANNUM.

PROBABLE. "Probable consequences" means very nearly the same as those results which are caused by something else: see *Chibnall v Paul*, 29 W.R. 536, cited NUISANCE.

"Probable amount of the cash balance" (Bankruptcy Act 1914 (c.59) s.89(2)(a)). These words refer to small amounts only, and the fact that the balance is large is not of itself a valid reason for the Department of Trade and Industry authorising an account with a local bank (*Re Walker, Ex p. the Trustee v Department of Trade and Industry* [1972] 1 All E.R. 1096). These words relate to the likelihood of fluctuation rather than to size, but in so far as they might relate to size they refer to small amounts only (*Re Walker (Decd.) (In Bankruptcy)* [1974] Ch. 193).

"Probable requirements": Stat. Def., Prison Act 1877 (c.21) s.18.

See PRESUMPTION; REASONABLE AND PROBABLE CAUSE; REASONABLE EXPECTATION.

PROBATE. "In introducing a new term into the vocabulary of the law of Scotland, I must begin by defining its meaning; by 'probate' I of course do not mean a copy of the will and codicils on stamped vellum; nor do I use the term in any sense having relation to the practice of procedure of the Division of the High Court of Justice which

PROBATION

takes cognisance of questions of probate in England. I mean by ‘probate’, simply the proof or ascertainment in law and fact of what are the words and writings which constitute the will of the deceased person whose estate is under administration” (per M’Laren L.O., *Pattison’s Trustees v Edinburgh University*, 16 Rettie 75 n).

“Probate valuation”: a bequest of such of certain articles as the legatee might select up to the value of £10,000 “taken at the probate valuation” was held to include articles valued for probate but in fact exempt from estate duty (*Re Eumorfopoulos* [1944] Ch. 133).

PROBATION. Stat. Def., Criminal Justice Act 1948 (c.58) s.3; Power of Criminal Courts Act 1973 (c.62) s.57.

“Probation order”: Stat. Def., Criminal Justice Act 1948 s.3; Powers of Criminal Courts Act 1973 (c.62) s.2.

“Probationer”: Stat. Def., Criminal Justice Act 1948 s.80(1).

PROBATIONARY DRAWINGS. Where an architect undertakes to supply an intending employer with “probationary drawings” of the building or works to be executed, he undertakes not merely to furnish drawings reasonably fit for approval but that the employer shall be the sole judge of their fitness (*Moffat v Dickson*, 22 L.J.C.P. 265).

PROBATIONARY PERIOD. A “probationary period” as specified in the Adoption Act 1958 (c.5) s.8(1) is not restricted to consideration of the character of the applicants, but may also serve for the purpose of inquiring into the child’s welfare (*S. v Huddersfield BC* [1975] Fam. 113).

PROBATIVE. “Evidence is ‘probative’ of a fact in issue if it is capable of having the tendency to which Lord Steyn was referring; in other words, evidence is probative if it tends towards proof or disproof of a fact in issue. The probative ‘value’ of evidence is a description of the strength of its tendency towards proof or disproof of the fact in issue. In *Braithwaite* [2010] EWCA Crim 1082 (a section 100 case) the Vice President referred to the term ‘substantial probative value’ as a test of its ‘force’. The Criminal Justice Act employs the terms ‘probative value’ (section 100(3), section 109 and section 112), ‘substantial probative value’ (section 100(1)(b) and section 101(1)(e)) and ‘highly probative’ (section 78(3)(c)). In the latter case, when the court is considering whether there is ‘new and compelling evidence against an acquitted person’, evidence is compelling if it is reliable, substantial and appears ‘highly probative’ of the case against the acquitted person.” (*Phillips v R.* [2011] EWCA Crim 2935.)

PROCEDURE. “The word ‘procedure’ is frequently used in contrast to ‘substance’ in order to distinguish between questions of procedural law and substantive law. Thus, unsurprisingly it is used together with the word ‘practice’ . . . to identify the scope of the Civil Procedure Rules. The scope of the language is wide enough to encompass the contents of a civil procedure code which deals with evidence and remedies. In determining the meaning of the word ‘procedure’ the context in which the word is being used is of the greatest significance. . . . It makes good practical sense to draw a distinction between the treatment of questions of procedure and questions of substance; the former to be dealt, as you would expect in accordance with the procedure normally applied by the court in which the proceedings are brought. This does not however mean that a cap on the amount of damages is obviously a question of procedure rather than a question of substance.” (*Harding v Wealands* [2006] UKHL 32 per Lord Woolf at [7]–[10].)

“Practice and procedure”: see PRACTICE.

See further *Colonial Sugar Refining Co v Irving* [1905] A.C. 369, cited APPEAL.

See ERROR OF PROCEDURE.

PROCEED. “Proceed to execution” (Courts (Emergency Powers) Act 1939 (c.67) s.1(1)) did not include an application under the old R.S.C. Ord.42 r.32, for the examination of a judgment debtor as to means (*Fagot v Gaches* [1943] K.B. 10).

“Proceed to trial”: an action could not be said to have proceeded to trial within the meaning of the old R.S.C. Ord.53A r.20, when judgment had been given in default of defence (*Superma and Sartory v Tenconi* [1939] Ch. 724).

A steam trawler engaged in hauling up her trawl is not “proceeding” within the meaning of art.20 of the Regulations for Preventing Collisions at Sea, so as to involve risk of collision: see *The Gladys* [1910] P. 13.

“Lessor . . . proceeding . . . to enforce . . . a right of re-entry or forfeiture” (Law of Property Act 1925 (c.20) s.146(2)). Relief against forfeiture could still be sought under this section where the landlord had physically re-entered the premises, without obtaining a court order, since the landlord was still “proceeding” to enforce his rights of forfeiture under this section until he obtained a judgment for possession (*Billson v Residential Apartments* [1992] 2 W.L.R. 15).

PROCEED IMMEDIATELY. An obligation for a ship “to proceed immediately” from Rotterdam to America is not broken by stopping at an English port to coal (*Forest Oak SS Co v Richard*, 5 Com. Cas. 100). See ON OR BEFORE.

PROCEED TO SEA. See *Rodrigues v Melhuish*, 10 Ex. 110; *Wood v Smith*, L.R. 5 P.C. 451; *The Cachapool*, 7 P.D. 217; *The Servia* [1898] P. 36.

PROCEED WITH ALL CONVENIENT SPEED. See CONVENIENT SPEED.

PROCEEDING. “The primary sense of ‘action’ as a term of legal art is the invocation of the jurisdiction of a court by writ; ‘proceeding’ the invocation of the jurisdiction of a court by process other than writ” (per Lord Simon, *Berry (Herbert) Associates v IRC* [1977] 1 W.L.R. 1437). “Any proceeding” (Judicature Act 1873 (c.66) s.89) is equivalent to “any action”, and does not mean any step in an action (*Pryor v City Offices Co*, 10 Q.B.D. 504). See Judicature Act 1925 (c.49) s.202. But in R.S.C. Ord.64 r.13 (now Ord.3 r.6) and Ord.70 r.1 (now Ord.3 r.6) “proceeding” is used as meaning a step in an action (*Houlston v Woodall*, 78 L.T. Jo. 113; *Smalley v Robey & Co* [1962] 1 Q.B. 577). Signing judgment under the old Ord.14 was not a “proceeding” within the rule: see *Deighton v Cockle* [1912] 1 K.B. 206 (overruling *Staffordshire Joint Stock Bank v Weaver* [1884] W.N. 78).

“Proceedings in any cause or matter” within s.41(a) of the Supreme Court of Judicature (Consolidation) Act 1925 (c.49) do not include an application for leave to issue a writ of fieri facias (*T.C. Trustees v J. S. Darwen (Successors)* [1969] 2 Q.B. 295). But they do include garnishee proceedings (*Llewellyn v Carrickford* [1970] 1 W.L.R. 1124).

“Proceedings” in s.1(3) of the Evidence Act 1938 (c.68) include criminal proceedings (*W&M Wood (Haulage) v Redpath* [1966] 3 W.L.R. 526). “Proceedings” (Town and Country Planning Act 1971 (c.78) s.243(1)(a)) includes criminal proceedings (*R. v Smith*, *The Times*, July 25, 1984).

A counter-claim is a “proceeding” within the condition of a bond (*Norman v Bolt*, Cab. & El. 77); see further *Chappell v North* [1891] 2 Q.B. 252, cited STEP.

“In any proceeding” (Bankruptcy Act 1914 (c.59) s.29(4)). These words refer to proceedings outside the bankruptcy (*Re A Debtor (No.819 of 1970)*, *Ex p. Biart* [1974] 1 W.L.R. 1475).

An examination of a witness, under the Companies Act 1862 (c.89) s.115 was not a “proceeding” in a matter (*Re Grey’s Brewery* 25 Ch. D. 400; *Re Norwich Equitable Fire Assurance*, 27 Ch. D. 515; but see *Re Beall*, above); *secus*, by rr.11 and 32 of the Companies (Winding-up) Rules, April 1892 (*Re Standard Gold Mining Co* [1895] 2 Ch. 545); but even so, the proceeding under the Companies Act 1862 (c.89) s.115 was of a special and secret nature and under the control of the court (see Companies Act 1985 (c.6) s.561; see also *Re London & Northern Bank* [1902] 2 Ch. 73). Such an examination was a “proceeding in the Supreme Court” within Judicature Act 1890 (c.44) s.5 (*Re Appleton* [1905] 1 Ch. 749, distinguishing *Re Grey’s Brewery*, above). (See now Judicature Act 1925 (c.49) s.50.)

The power given by Companies Act 1862 (c.89) s.85 to restrain “any action, suit, or other proceeding” against a company in liquidation extended to quasi-criminal proceedings, e.g. for recovering penalties for neglecting to publish statement, form D, or annual list of members, or to make yearly statement of revenue (*Re Briton Medical Assurance*, 32 Ch. D. 503). Going to sale under a *fieri facias* executed by seizure was a “proceeding” within the same section (*Re Perkins Beach Lead Mining Co*, 7 Ch. D. 371; *Re Artistic Colour Printing Co*, 14 Ch. D. 502), and so was a distress for rent (*Re Exhall Mining Co*, 4 D.G.J. & S. 377; *Re Lancashire Cotton Co*, 35 Ch. D. 656; *Re Higginshaw Mills* [1896] 2 Ch. 544; Buckl. (12th edn), 478). But *Re Lancashire Cotton Co* was questioned in *Allan v West Lothian Oil Co*, 30 S.L.R. 114. See Companies Act 1985 (c.6) s.521. Proceedings instituted by the Department of Health and Social Security against a company in voluntary liquidation, alleging that the company had committed an offence by failing to pay over the contributions due from it, was held to be a “proceeding” within the meaning of this section (*Re J. Burrows (Leeds)* [1982] 2 All E.R. 882).

A power of attorney to commence, etc. “actions, suits, or other proceedings”, confers authority to sign a bankruptcy petition (*Ex p. Wallace*, 14 Q.B.D. 22); and, in like manner, the power given to an official liquidator (Companies Act 1862 (c.89) s.95) to bring or defend “any action, suit, or prosecution, or other legal proceeding”, includes the power to serve a bankruptcy notice (*Re Winterbottom* 18 Q.B.D. 446). See Companies Act 1985 (c.6) s.539. See further OTHER.

A company’s winding-up petition, even before any order thereon, was a “proceeding” within Companies (Winding-up) Act 1890 (c.63) s.3 (*Re Laxon* [1892] 3 Ch. 31).

An interpleader summons to which a company in liquidation is made a respondent is a “proceeding” against that company within the meaning of s.525(2) of the Companies Act 1985 (c.6) (*Eastern Holdings Establishment of Vaduz v Singer and Friedlander* [1967] 1 W.L.R. 1017). See also AGAINST.

“The proceedings of a company” in a clause giving a shareholder a right to inspect, means “the proceedings of any meeting of the shareholders, and not the proceedings of the directors” in their minute book (*R. v Mariquita Co*, 28 L.J.Q.B. 67).

“Proceedings to recover costs on a bill for non-contentious business” (Solicitors’ Remuneration Order 1972 (SI 1972/1139) art.3(2)) include not only proceedings

where costs are specifically claimed but also winding-up proceedings where the petition has been presented by a solicitor for the purpose of recovering costs (*Re Laceward* [1981] 1 All E.R. 254).

A “criminal proceeding” is a far larger term than “criminal prosecution” (*Yates v The Queen*, 14 Q.B.D. 648).

“Proceedings by a wife” (Matrimonial Causes Act 1950 (c.25) s.18(1)(b), now Matrimonial Causes Act 1973 (c.18) s.46) does not include anything that may follow in the same suit, e.g. a cross-petition by the husband (*Levett v Levett and Smith* [1957] P. 156). It means proceedings by a person who is a wife when they are commenced, even if she was named for the whole of the three-year period of residence in England (*Navas v Navas* [1970] P. 159).

“Proceedings for divorce” (Matrimonial Proceedings and Property Act 1970 (c.45) s.3(1)). Proceedings to seek a declaration that a US divorce decree is valid in England is a “proceeding for divorce” within the meaning of this section (*P. (L.E.) v P. (J.M.)* [1971] P. 318).

“Proceedings” (Legal Aid Act 1974 (c.4) s.9(6)) extend to all proceedings caused by the legal aid certificate (*Hanlon v The Law Society* [1981] A.C. 124).

“Proceeding” (Limitation Act 1939 (c.21) s.31(1)) includes an application for a distress warrant in respect of arrears of general rates (*China v Harrow UDC* [1954] 1 Q.B. 178).

Court-martial proceedings are “proceedings” within the meaning of s.8 of the Sexual Offences Act 1967 (c.60) (*Secretary of State for Defence v Warn* [1970] A.C. 394).

“Proceedings . . . pending” (Landlord and Tenant Act 1954 (c.56) Sch.IX para.8). A pending appeal from a decision of the county court was held not to be such a proceeding (*Etam v Forte* [1955] 1 Q.B. 239).

“Proceedings” (Taxes Management Act 1970 (c.9) s.98(1)(ii)). The summary award of a penalty under s.98(1)(ii) did not constitute “proceedings” for the recovery of a penalty for the purposes of s.98(1)(ii) (*Script & Play Productions v General Commissioners of Income Tax* [1972] 1 W.L.R. 392).

“Proceedings relating to a trade” (Taxes Management Act 1970 (c.9) Sch.3 r.2). Penalty proceedings instituted by the General Commissioners were not “proceedings relating to a trade” within the meaning of this rule (*R. v IRC Ex p. Knight* [1973] 3 All E.R. 721).

“Proceedings” (Rent Act 1968 (c.23) s.1(3)). In a case where the tenant of one floor of a six-floor house applied to the rent officer to fix a fair rent, and there later developed a dispute as to whether the rent officer, in order to fix a rent, acted ultra vires in apportioning a rateable value to the flat, it was held that there were “proceedings” within the meaning of this section from the time of the application (*R. v Westminster Rent Officer Ex p. Rendall* [1973] Q.B. 959).

“In any such proceedings” (Contempt of Court Act 1981 (c.49) s.4(2)) can include committal proceedings (*R. v Horsham Justices, Ex p. Farquharson*, [1982] 2 W.L.R. 430).

“Proceedings” (RIBA Standard Form of Contract cl.30(7)) include proceedings begun before as well as after the date of the final certificate (*Kaye (P. & M.) v Hosier & Dickinson* [1972] 1 W.L.R. 146).

Interlocutory proceedings brought by a plaintiff against a third party were not a “proceeding in the High Court” within the meaning of R.S.C. Ord.23 r.1 and the court,

therefore, had no jurisdiction to order the plaintiff to provide security for costs of the third party (*Taly NDC International NV v Terra Nova Insurance Co* [1986] 1 All E.R. 69).

“A stay of the proceedings” (R.S.C. Ord.53 r.3(10)). A decision made by the Secretary of State could be a “proceeding” which, under this rule, would be stayed on the granting of leave to apply for judicial review (*R. v Secretary of State for Education and Science, Ex p. Avon CC* [1990] C.O.D. 349).

(Supreme Court Act 1981 (c.54) s.9(7).) The trial of remaining counts in an indictment did not constitute “proceedings arising out of” that trial for the purposes of s.9(7) (*R. v Lord Chancellor, Ex p. Maxwell* [1996] 4 All E.R. 751).

“Costs of and incidental to all proceedings” (Supreme Court Act 1981 (c.54) s.51(1)). Applications for leave to move for judicial review cannot constitute “proceedings” within the meaning of this section (*R. v Test Valley BC, Ex p. Goodman* [1992] C.O.D. 101). But in *R. v Darlington BC, Ex p. Association of Darlington Taxi Owners and Another (No.2)*, *The Times*, April 14, 1994 it was held that an application for leave to apply for judicial review “clearly constituted” “proceedings” for the purpose of this section.

“Proceedings” in s.63(1) of the Administration of Justice Act 1982 (c.53) commence when the accused comes to the court to answer the charge, and not the time the charge is made (*R. v Elliott* (1985) 81 Cr.App.R. 115).

“In connection with any proceedings” (Legal Aid (General) Regulations 1980 (SI 1980/1894) reg.65). “Proceedings” here refer only to that part of the proceedings for which the legal and certificate has been granted, and cannot be deemed to cover the whole action (*Littaur v Steggle Palmer* [1986] 1 W.L.R. 287).

“Proceedings” (Recognition of Divorces and Legal Separations Act 1971 (c.53) ss.2, 3(1), as amended by Domicile and Matrimonial Proceedings Act 1973 (c.45) s.15(2)) means a single set of proceedings that has to be instituted in the same country as that in which the divorce is ultimately obtained. So that, where a Pakistani produced talaq in England against his wife resident in Pakistan, and then, as required by Pakistan law, sent a written notice to the chairman of his local council in Pakistan, these were not “proceedings” under this Act (*R. v Secretary of State for the Home Department, Ex p. Ghulam Fatima* [1986] A.C. 527). See also *Maples v Maples* [1987] 3 W.L.R. 487 where it was held that a Jewish divorce (*get*) was an extra-judicial proceeding which did not, under English law, dissolve the marriage.

“Proceedings” under the Recognition of Divorces and Legal Separations Act 1971, as amended, meant a single set of proceedings which had to be instituted in the same country in which the divorce was ultimately obtained and despite different wording in the Family Law 1986 (c.55), it was clear from the legislative history that the 1986 Act had not intended to change the law in relation to transnational divorces (*R. v Secretary of State for the Home Department, Ex p. Ghulam Fatima* [1986] A.C. 527 followed; *Berkovits v Grinberg (Att-Gen intervening)* [1995] 1 F.L.R. 477).

“In any proceedings” (Police and Criminal Evidence Act 1984 (c.60) ss.78(1), 80(5)) means any proceedings that take place after the section came into effect, and would therefore permit a former wife to give evidence of what had occurred during the marriage and before the Act came into force (*R. v Cruttenden* [1991] 2 W.L.R. 921). The words “in any proceedings” in these sections cover committal proceedings (*R. v Oxford City Justices, Ex p. Berry* [1988] Q.B. 507; *R. v King’s Lynn Justices, Ex p. Holland, The Times*, April 6, 1992).

“Proceedings in the courts” (Protection from Eviction Act 1977 (c.43) s.3) is directed to the premises in respect of which possession is sought. It does not require that separate actions should be taken against every occupant (*Thompson v Elmbridge BC* [1987] 1 W.L.R. 1425).

“To institute and carry on such proceedings” (Shops Act 1950 (c.28) s.71(1)). “Proceedings”, for the purposes of this section are not restricted to criminal proceedings and can embrace civil proceedings for an injunction (*Kirklees BC v Wickes Building Supplies* [1992] 3 W.L.R. 170).

“No other proceedings” (Insolvency Act 1986 (c.45) s.11(3)(d)). The detention by a creditor of the debtor’s aircraft was not an “other proceeding” for the purposes of this section (*Re Paramount Airways* [1990] B.C.C. 130).

“Proceedings which are pending” (Children Act 1989 (c.41) Sch.14 para.1(1)). All genuine active applications made in wardship proceedings which had been issued before October 14, 1991 were “proceedings” which were “pending” within the meaning of this paragraph (*Re C. (a Minor)* [1992] F.C.R. 169).

“Proceedings of Parliament” (Bill of Rights 1688 art.9). The process of appointing a chairman and membership of Parliamentary Committees formed part of the “proceedings of Parliament”, and evidence about them fell within the privileges of Parliament and could not be adduced without the authority of Parliament (*Rost v Edwards* [1990] 2 W.L.R. 1280). “Parliamentary proceedings”: Stat. Def., Olympic Symbol etc. (Protection) Act 1995 (c.32) s.4(16).

“Proceedings for the recovery or administration of any property” (Theft Act 1968 (c.60) s.31(1)(a)) would not embrace bankruptcy proceedings (*R. v Kansal* [1992] Gazette, 15 July, 35).

“Proceedings in the nature of an appeal” (Race Relations Act 1976 (c.74) s.54(2)). The right of review of a decision of the General Medical Council to refuse to grant full registration of a doctor qualified in Pakistan was a “proceeding in the nature of an appeal” within the meaning of this section (*Khan v General Medical Council, The Times*, March 29, 1993).

The term “proceedings . . . against the defendant” within the meaning of the Drug Trafficking Offences Act 1986 (Designated Countries and Territories) Order 1990 Sch.3 included proceedings in rem in which the standing of a person with financial interest in the proceedings was plainly recognised (*Re SL* [1995] 4 All E.R. 159).

“Bringing of proceedings” (Council Directive 72/166 relating to insurance against civil liability in respect of the use of motor vehicles art.3). The “bringing of proceedings” was when the court prepared, issued and sealed the summons for service (*Silverton v Goodall and Motor Insurers Bureau* [1997] 5 C.L. 81).

“Proceedings in public” (Defamation Act 1952 (c.66) s.7(3)). The final report of a special inquiry amounted to “proceedings in public” where the status and procedure of the inquiry was such that its final report, being its judgment, even if not made public, formed part of the proceeding in public (*Tsikata v Newspaper Publishing Plc* [1997] 1 All E.R. 655).

Section 11(3)(d) of the Insolvency Act 1986 prevented specified legal proceedings and “other proceedings” from being commenced against a company during administration without the consent of the administrator or the leave of the court. An application for a determination by the Rail Regulator for directions under s.17 of the Railways Act 1993 was regulatory in nature and was not caught by the prohibition on “other proceedings” (*Re Railtrack Plc* [2002] 4 All E.R. 435, CA).

PROCEEDING

“... it came to my attention that lower courts are encountering similar difficulties over the meaning of the word ‘proceedings’ as used in para.4A.2 of the Practice Direction: Protocols. ... it appears to me that this word clearly needs to be interpreted along the lines indicated in paragraph 34 above. In other words, for instance, the dealings between the parties which lead up to the disposal of a clinical negligence claim are to be treated as ‘proceedings’ for the purposes of that paragraph even if the dispute is settled without the need to issue a claim form.” (*Crosbie v Munroe* [2003] 2 All E.R. 856 at 863 per Brooke L.J.)

“[16] As to the question of whether the application for a freezing order is to be regarded as ‘proceedings’, it is important to recall that s.42, as amended, is part of a code introduced by the [Courts and Legal Services Act 1990]. That code makes a clear distinction between proceedings, addressed in the Jurisdiction Order, and remedies, addressed in the Remedies Regulations. ... [17] Accordingly, the ‘proceedings’ ... were the negligence action. That was not required to be in the High Court. Nor could the remedy sought of a freezing order be extracted from the action and deemed ... to be free-standing proceedings so as to place the judge under an obligation to transfer it to the High Court.” (*Schmidt v Wong* [2005] EWCA Civ 1506 at [16].)

“The question to the opinion of the High Court is: were we correct in law to interpret the words ‘proceeding in the same direction’ as used in reg.24(1)(a) of the Zebra, Pelican and Puffin Pedestrian Crossing Regulation 1997 to include a vehicle which was stationary whilst waiting in a queue of standing traffic. ... This question should be answered ‘no’. The magistrates were not correct in law to interpret the words of reg.24(1)(a) in that manner. A stationary vehicle is not a vehicle ‘proceeding’ in the same direction.” (*Brooks v Blackpool Borough Council* [2013] EWHC 3735 (Admin).)

“Conclusion of proceedings”: Stat. Def., Criminal Justice and Public Order Act 1994 (c.33) s.67(9)).

“Decision in proceedings on an appeal”: see DECISION.

“Judicial proceedings”: Stat. Def., Olympic Symbol etc. (Protection) Act 1995 (c.32) s.4(16).

“Other legal proceedings”: see OTHER.

“Action or proceeding”: see ACTION.

“At any stage of the proceedings”: see STAGE.

“Like proceedings”: see LIKE.

“Necessary and legal measures and proceedings”: see LEGAL MEASURES.

“Other proceedings” (Recognition of Divorces and Legal Separations Act 1971 (c.53) s.2(a)): see OTHER PROCEEDINGS.

“Proceeding instituted”: see INSTITUTED.

“Proceedings ... begun”: see BEGIN.

“Proper proceedings” (Matrimonial Causes Act 1965 (c.72) s.34(1)): see PROPER PROCEEDINGS.

“Proceedings commenced” (Criminal Law Act 1977 (c.45) Sch.14 para.1): see COMMENCED.

“Suit or proceeding”: see SUIT.

Stat. Def., County Courts Act 1959 (c.22) s.201; Road Traffic Regulation Act 1967 (c.76) s.80(4).

See ACTION; CIVIL PROCEEDING; CRIMINAL CAUSE; JUDICIAL PROCEEDING; LEGAL PROCEEDINGS; MATTER; PROCESS; STEP IN THE PROCEEDINGS.

PROCEEDINGS. For the purposes of the Civil Jurisdiction and Judgments Act 1982, “proceedings” may include arbitration proceedings, but subject to some important qualifications (*ETI Euro Telecom International NV v Republic of Bolivia* [2008] EWCA Civ 880 per Stanley Burnton L.J. at [120]).

In s.6 of the Proceeds of Crime Act 2002, “proceedings” means “proceedings under a single indictment” (*R. v Moulden* [2008] EWCA Crim 2561).

“In my view whether ‘proceedings’ start when the accused is formally charged at the police station or only at the later stage when the accused is brought to court to answer the charge, they have not in the present case yet started.” (*Coulson v Newsgroup Newspapers Ltd* [2011] EWHC 3482 (QB).)

“The word ‘proceedings’ is a word apt to cover all issues raised in legal proceedings and is a term with a meaning wider than simply the claims being brought by a claimant (or, indeed, the claims being brought by any party) in those proceedings. It is a term which includes defences raised in the proceedings as well. The width of the concept of ‘proceedings’ in the context of the UK proceedings and the US proceedings is reinforced by the terms of clause 1.1, which make it clear that the UK proceedings and US proceedings may include a significant number of claims beyond simply the claims made by the Claimant against the Defendant. In my view, it is also reinforced by clause 6.1 relating to disposal of the proceedings and the terms of the consent order annexed to the Settlement Agreement, which in paragraph 1 refers to ‘all further proceedings in this action’ being stayed, i.e. covering all aspects of the issues in dispute in the litigation between the parties.” (*Stretchline v H&M (UK)* [2014] EWHC 3605 (Ch).)

“In Northern Ireland the additional power contained in Art.161 of the 1981 Order provides District Judges with a general power of adjournment of ‘proceedings’. There is no definition of ‘proceedings’. The applicant contends that Art.161 does not apply to a breach of bail hearing as that does not constitute a ‘proceeding’. Rather, according to the applicant, a breach of bail hearing amounts to a review of the constable’s exercise of the power of arrest for breach of bail. Breach of bail does not constitute an offence. The alleged breach of bail results, not in a charge against a defendant, but in the defendant being brought before the Magistrates Court for a determination as to whether he is in breach of bail and if so whether he should be remanded in custody or released on bail.

[14] The Court is unable to accept this argument concerning the nature of ‘proceedings’. The defendant is before the Court because of the underlying criminal proceedings. A grant or refusal of bail is a part of the criminal proceedings in respect of the underlying charge. An alleged breach of bail will arise out of a further event but we are satisfied that the breach of bail hearing arises out of the same criminal proceedings. The title appearing above Article 6 of the 2003 Order is ‘Bail in Criminal Proceedings’. We are satisfied that a hearing in respect of an alleged breach of bail is also part of the criminal proceedings. Hearings arising in the course of criminal proceedings are also proceedings. The Court is satisfied that a hearing before a District Judge in respect of alleged breach of bail constitutes ‘proceedings’ for the purposes of Art.161.” (*Lynch, Re Judicial Review* [2016] NIQB 4.)

PROCEEDINGS BEFORE THE CROWN COURT. In s.6 of the Proceeds of Crime Act 2002 the phrase “proceedings before the Crown Court” means proceedings under a single indictment (*R. v Moulden* [2008] EWCA Crim 2561).

PROCEEDINGS IN PARLIAMENT. “No further relevant statutory explanation or definition of the phrase in art.9, ‘proceedings in Parliament’, has been given in this jurisdiction. Our attention has been drawn to S.13 (5)(b) of the Defamation Act 1996 which recognises that the ‘protect(ion) . . . from legal liability for words spoken or things done, in the course of, or for the purposes of or incidental to, any proceedings in Parliament’ referred to in s.13 (4), extends to ‘the presentation or submission of a document to either House or a Committee’. However that is as far as the statutory provision goes: it does not amplify or explain art.9. Section 13 (5) extends the scope of the ‘words spoken or things done’ in s.13 (4), but those words are governed by the earlier words ‘any enactment or rule of law insofar as it protects a person from legal liability . . .’. Therefore it does not assist in the determination of the extent of the privilege granted by art.9. Erskine May—Parliamentary Practice (23rd edition)—suggests that: ‘The primary meaning of proceedings, as a technical Parliamentary term, which it had at least as early as the 17th century, is some form of action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches a decision. An individual Member takes part in a proceeding usually by speech, but also by various recognised forms of formal action, such as voting, giving notice of a motion, or presenting a petition or report from a committee, most of such actions being time-saving substitutes for speaking. Officers of the House take part in its proceedings principally by carrying out its orders. . . . Strangers may also take part in the proceedings . . . for example by giving evidence’. As we shall see, this analysis is not entirely comprehensive, but, significantly, it underlines that the privilege of individual members is concerned with what may be described as their involvement in the legislative process.” (*R. v Chaytor* [2010] EWCA Crim 1910.)

PROCEEDS. Money paid under protest was the “proceeds” of goods and chattels taken under a *fieri facias* within the old R.S.C. Ord.57 r.1(b) (*Smith v Critchfield*, 14 Q.B.D. 873).

“Proceeds of sale” Bankruptcy Act 1869 (c.71) s.87) meant the amount actually realised by the sale (*Turner v Bridgett* 8 Q.B.D. 392), as distinguished from money paid to the sheriff for, and with the assent of, the execution creditor to prevent a sale (*Ex p. Brooke* 9 Ch. 301; *Stock v Holland* L.R. 9 Ex. 147). See now Bankruptcy Act 1914 (c.59) s.41.

“Proceeds of sale” (General Regulations Pt II Appendix to Bankruptcy Rules 1886 r.2; see now Bankruptcy Rules 1952 (SI 1952/2113) r.74) means “what is left after paying the charges upon the fund” (per Bigham J., *Re Garner* [1906] 2 K.B. 213).

“Proceeds of sale” (Finance Act 1930 (c.28) s.40(2)). The “proceeds of sale” of works of art, etc. exempt from estate duty until sale, were not the gross proceeds, but the net amount received after paying commission and other costs of the sale (*Tyser v Att-Gen* [1938] Ch. 426). See SALE; *Re Garner* [1906] 2 K.B. 213, cited SALE.

“Proceeds of sale” (Law of Property Act 1925 (c.20) s.28(1)) means the proceeds of a sale for which the trustees are trustees for sale (*Re Wellsted's Will Trusts* [1949] Ch. 296). They did not include compensation moneys paid to the trustees of a settlement and Pts I, II and V of the Town and Country Planning Act 1954 (c.72) (*Re Meux, Gilmour v Gilmour* [1958] Ch. 154).

See *Re Whitman* [1944] 3 D.L.R. 792, where “proceeds” in a will was construed as “income”.

In *Entwisle v Dent* (1 Ex. 812), a direction by a merchant to his commission agent to remit the “proceeds” of goods consigned to the latter, was held to mean that the agent was to remit as soon as a part of the proceeds considerable enough to be remitted was received, and so on till all was remitted. See REMIT.

“The ship, or proceeds thereof”: see *James v London & South Western Railway*, L.R. 7 Ex. 287, cited DAMAGE.

“Proceeds” (Betting, Gaming and Lotteries Act 1963 (c.2), s.54(1)): see *Avais v Hartford, Shankhouse and District Workingmen’s Social Club* [1969] 2 A.C. 1).

“Proceeds of drug trafficking” (Drug Trafficking Offences Act 1986 (c.32), s.2(1)). “Proceeds”, for the purposes of this section, are not limited to profits (*R. v Smith (Ian)* [1989] 1 W.L.R. 765).

“Proceeds” (Theft Act 1968 (c.60), s.5(4)). Cash handed over by a third party for a cheque represents the “proceeds” of the cheque; so that where a person received two cheques by mistake instead of one, and cashed them both, the cash received represented the “proceeds” of “property” got “by another’s mistake” within the meaning of this section (*R. v Davis* (1989) 88 Cr.App.R. 347).

(Drug Trafficking Act 1994 (c.37)). “Proceeds” did not mean profit but sale price (*R. v Banks (David Malcolm)* [1997] 2 Cr.App.R.(S.) 117).

“The first of the stages to which we referred is commonly called the ‘benefit’ calculation, but the term ‘benefit’ is misleading in this context because it is clear from s.4 [of the Drug Trafficking Act 1994] that what the court must assess is the value of the defendant’s proceeds of drug trafficking which are to be calculated by reference to gross receipts (ie turnover) rather than profit. In our judgment it is better, therefore, to use the statutory word ‘proceeds’” (*R. v Green* [2007] EWCA Crim 1248 at [8]).

“Net proceeds”: see NET.

See RECEIPTS OF PROCEEDS; RENTS AND PROFITS; see further FREE ANNUAL; FREE YEARLY.

PROCESS. “‘Proces’ are the writs and precepts that go upon the original . . . But in actions personals, as in debt, trespassse, or detinue, the processe is a distresse” (Termes de la Ley).

“Process” is the doing of something in a proceeding in a civil or criminal court, and that which may be done without the aid of a court is not a “process”. Therefore, a distraint, whether for rent or any other payment, and whether the right of distress be given by the common law or statute (or, as it should seem, by any other authority), was not a “process”, nor was it “an execution or other legal process” within the Bankruptcy Act 1869 (c.71) s.13, or within the substituted section of the Bankruptcy Act 1883 (c.52) s.10; see now Bankruptcy Act 1914 (c.59) s.9 (*Blackamore’s Case*, 8 Rep. 157 a; *R. v Crisp*, 1 B. & Ald. 287; *Ex p. Birmingham & Staffordshire Gas Co, Re Fanshaw*, L.R. 11 Eq. 615; *Re Peake, Ex p. Harrison*, 13 Q.B.D. 753); so, semble, of the registration of a judgment under Judgments Act 1838 (c.110) s.13 (*Fluenter v M’Clelland*, 8 C.B.N.S. 357); but a writ of sequestration was such a process (*Re Browne*, 40 L.J. Bk. 46); and a notice of appeal from a bastardy order was a “process” within Naturalisation (Children Born Abroad during the Troubles) Act 1677 (c.6) (*R. v Middlesex Justices*, 17 L.J.M.C. 111).

“Process” does not include an order made by a court in the exercise of its punitive jurisdiction; therefore, a Justice’s Order, under Distress for Rates Act 1849 (c.14) s.2, committing a person to prison for non-payment of rates, or an order of imprisonment for either of the defaults in payment mentioned in the exceptions to Debtors Act 1869

(c.62) s.4, was not a “legal process against the property or person of the debtor”, within Bankruptcy Act 1914 (c.59) s.9, nor was it a “remedy against the property or person of the debtor”, within s.7 of the same Act (*Re Edgcome* [1902] 2 K.B. 403, following *Middleton v Chichester*, 6 Ch. 152, and *Re Smith* [1893] 2 Ch. 1, and rejecting dicta of Mellish L.J., *Cobham v Dalton*, 10 Ch. 657). Semble, a committal for non-payment of debt under s.5 of the Debtors Act 1869 was punitive, and was not a “legal process”, and its restraint (if at all) had to be under some other provision than s.10 of the Bankruptcy Act 1883 (c.52) (per William L.J., *Re Edgcome*, above). (See now s.9 of 1914 Act.)

“All steps taken in an execution—the seizure and the sale—are, in the natural meaning of the word, comprehended in the term ‘process’” (per Lynch J., *Re Delahoyd*, 11 Ir. Ch. Rep. 407); therefore, Bankruptcy Act 1849 (c.106) s.211 did not prohibit a judgment creditor from registering his judgment under Judgments Act 1838 (c.110) s.13 (*Flueter v M’Clelland*, above), for such a registration was not a “process”.

A trader-debtor’s summons was not a “process” (*Re Dobson*, 8 Ir. Ch. R. 391), nor an adjudication in bankruptcy thereon (*Re Kerr*, 1 L.R. Ir. 67; *Re M’Veigh*, 5 L.R. Ir. 177); nor was a petition in bankruptcy (*Ex p. Walker*, *Re Haywood*, 6 D.G.M. & G. 752; *Ex p. Treherne*, *Re Saunders*, 2 D.G.F. & J. 661; *Ex p. Hills*, 3 D.G. & J. 476 n).

A mere notice, though headed with the name of a county court, was not a “process” within County Courts Act 1846 (c.95) s.57 (*R. v Castle*, 27 L.J.M.C 70); but such a notice, especially if it also had the Royal Arms and (without authority) professed to bear the signature of the registrar, was a “false colour or pretence” of such “process” (*R. v Evans*, 26 L.J.M.C. 92; *R. v Richmond*, 28 L.J.M.C. 188).

“Process of manufacture” (Restrictive Trade Practices Act 1956 (c.68) s.6(1)(d)) held to include the provision of lettering on a stone memorial (*Re Scottish Master Monumental Sculptors’ Association’s Agreement*, L.R. 5 R.P. 437).

“Process or treatment” (Road and Rail Traffic Act 1933 (c.53) s.1(5)(b)) included the putting by an expert packer of goods in bales and chests secured with steel hooks (*Carpenter v Lusty & Sons* [1957] 1 Lloyd’s Rep. 16), but not the mere addition of disinfectant to effluent from a septic tank (*Sweetway Sanitary Cleansers v Bradley* [1962] 2 Q.B. 108).

“Process of loading or unloading”: see *Stuart v Nixon* [1900] 2 Q.B. 95; *Lysons v Knowles* [1901] A.C. 79 cited AVERAGE WEEKLY EARNINGS. See also UNLOADING.

“Subjection of goods or materials to any process” (Capital Allowances Act 1968 (c.3) s.7(1)(e)). The word “process” connotes a substantial measure of uniformity of treatment: a continuous and regular action carried on in a definite manner. The cleaning, servicing and repairing of items of plant after they had been returned from a hiring was not a “process” within the meaning of this section, and the buildings in which it was carried out were therefore not “industrial buildings” for the purposes of this Act (*Vibroplant v Holland* [1982] 1 All E.R. 792). The examination of tyre casings for the purpose of deciding whether they are suitable for remoulding is not to subject them to a “process” within the meaning of this section (*Crusabridge Investments v Casings International* (1979) T.C. Leaflet No.2799). See also GOODS; FACTORY.

“Process” (Factories Act 1961 (c.34) s.175(1)) denotes a continuous activity and would not cover a single operation such as, as in this case, the demolition and removal of a kiln (*R. v AI Industrial Products* [1987] I.C.R. 418). This case was overruled by the House of Lords when it held that the demolition of a factory was a “process”

within the meaning of the Asbestos Regulations 1969 (SI 1969/690) reg.76(1) (*Nurse v Morganite Crucible* [1989] 2 W.L.R. 82). Dry sweeping asbestos was the undertaking of a "process" within the meaning of these regulations (*Edgson v Vickers and Another* [1994] I.C.R. 510).

See also ARTICLE.

"Industrial or trade process": see INDUSTRIAL PROCESS.

"Process" contrasted with "manufacture": see MANUFACTURE.

See COMPLAINT; INFORMATION; MANUFACTURING PROCESS; ORIGINATING SUMMONS; PETITION; PLAINT; PRACTICE; PROCEEDING; WRIT.

PROCESSED. Stat. Def., Agricultural Marketing Act 1983 (c.3) s.8.

PROCESSING. For discussion of the potential width of the notion of processing in relation to data, in the context of data protection, see *Campbell v MGN Ltd* [2003] 2 W.L.R. 80, CA.

PROCESSING (DATA). For discussion of the meaning of processing in the context of data, and in particular the need to analyse which parts of an administrative procedure involve the processing of data, see *Johnson v Medical Defence Union Ltd* [2007] EWCA Civ 262.

PROCESSION COMMONLY OR CUSTOMARILY HELD. A procession may be held commonly or customarily even if it changes its route (*R. (Kay) v Commissioner of Police of the Metropolis* [2008] UKHL 69).

PROCTOR. "An attorney at law answers to the procurator, or proctor, of the civilians and canonists" (3 Bl. Com. 25). See ATTORNEY; SOLICITOR; Jacob; 10 Encyc. 484; Phil. Ecc. Law, 937.

PROCURATION. "'Procurations' are certain sums of money which parish priests pay yearly to the bishop, or archdeacon, *ratione visitationis*" (Cowel).

See PER PROCURATION.

PROCURE. An obligation to "procure" something to be done by another person connotes, at any rate, that the obligor is to take steps to procure its being done (per Fry L.J., *Lowther v Caledonian Railway* [1982] 1 Ch. 73).

"Procure", which can be paraphrased as "see to it", denotes a personal obligation to ensure that something be done; where it occurs in a covenant, the covenant is naturally to be regarded as being of a personal character and is inappropriate where successors in title are to be found (*Re Royal Victoria Pavilion, Ramsgate* [1961] Ch. 581).

Gifts, etc. "to endeavour to procure the return" of a Member of Parliament (Corrupt Practices Prevention Act 1854 (c.102) s.2(3)) were bribery, though given only on a test ballot, and to secure a person being adopted as the candidate of a particular party (*Britt v Robinson*, L.R. 5 C.P. 503; sub nom. *Brett v Robinson*, 39 L.J.C.P. 265).

A person, even though he be the election agent, did not "induce or procure" a prohibited person to vote at an election, within Corrupt and Illegal Processes Prevention Act 1883 (c.51) s.9, by merely having the opportunity to prevent the vote but doing nothing (*Stepney*, 4 O'M. & H. 178).

"Procure himself to be arrested, or his goods, etc. attached, sequestered, or taken in execution" (Bankrupt (England) Act 1825 (c.16) s.3; Bankrupt Law Consolidation Act 1849 (c.106) s.67): this phrase imported an intent on the part of the alleged bankrupt to defeat or delay his creditors, and did not include a *fieri facias* on a default judgment (*Gibson v King*, C. & M. 458), or on a warrant of attorney (*Gore v Lloyd*, 13 L.J. Ex. 366). In the latter case Abinger C.B. said, "it might just as well be argued that any step which any defendant voluntarily takes in a cause is a procuring of the judgment and

PROCUREMENT

execution against him, as that the giving of this warrant of attorney, and the entering up judgment upon it, was a procuring by this person of his goods to be taken in execution”.

“Procure a woman to become . . . a common prostitute” (Sexual Offences Act 1956 (c.69) s.22(1)). “Procure” is a word in common usage and there was held to be nothing wrong in the judge using the word “recruit” when directing the jury on the issue of procurement (*R. v Broadfoot* [1976] 3 All E.R. 753). For a man to be guilty of attempting a crime under this section he must think that the woman is not already a common prostitute; so that a man who thought he was talking to a prostitute whereas he was actually talking to a police officer was held not guilty of attempting to “procure” her to become a common prostitute (*R. v Brown* [1984] 3 All E.R. 1013). See also AID OR ABET.

“Procure a girl . . . to have unlawful sexual intercourse” (Sexual Offences Act 1956 (c.69) s.23(1)). It is not sufficient to show procurement for the purposes of unlawful sexual intercourse. It is necessary to prove that unlawful sexual intercourse did take place (*R. v Johnson* [1964] 2 Q.B. 404).

Commission on loan “procured”: see *Fisher v Drewett*, 48 L.J. Ex. 32; *Green v Lucas*, 33 L.T. 584.

Authority to house or estate agent to “procure” or “find” a purchaser and “negotiate” a sale, does not, of itself, authorise him to enter into a contract binding his principal (*Chadburn v Moore*, 61 L.J.Ch. 674; *Hamer v Sharp*, L.R. 19 Eq. 108); see *Lewcock v Bromley* [1920] W.N. 346. See further *Keen v Mear* [1920] 2 Ch. 574. *Secus*, of an authority to “sell”, even though the subject-matter be realty (*Rosenbaum v Belson* [1900] 2 Ch. 267). An authority to “sell”, “seems to me to mean ‘I authorise you to make some one a purchaser’”; but an authority to “find a purchaser” means “I authorise you to find some one who is willing to become a purchaser” (per Buckley J., *Rosenbaum*). See also *Scott v Willmore & Randell* [1949] 1 A.L.R. 510; cp. INTRODUCE; TREAT AND VIEW.

“Procure” a dangerous drug, for the purpose of the Dangerous Drugs Act 1920 (c.46) s.6: see *R. v Yasukichi Miyagawa* [1924] 1 K.B. 614.

“To procure any instrument” (Offences against the Person Act 1861 (c.100) s.59): the word “procure” is used in the ordinary meaning of getting possession from another person (*R. v Mills* [1963] 2 W.L.R. 137).

“Procures the execution of a valuable security” (Theft Act 1968 (c.60) s.20(2)). A valuable security can be executed more than once; so that a person who obtains cash abroad for forged travellers cheques was guilty of procuring the execution of a valuable security not only at the time the cheques were cashed, but also when final payment was made on their presentation to the issuing bank in the United Kingdom (*R. v Beck* [1985] 1 W.L.R. 22).

For a comparison of the phrase “counsel and procure” with “aid and abet”, see per Lord Goddard C.J. *Ferguson v Weaving* [1951] 1 K.B. 814.

“Procured” (Betting Act 1853 (c.119) s.1): see *Samuel v Adelaide Club* [1934] 2 K.B. 69, 77.

“Procuring the election of a candidate”: see PROMOTING.

See AID, ABET, COUNSEL OR PROCURE; CAUSE OR PROCURE; COUNSEL OR PROCURE; INDUCE; OBTAIN; INTERFERE; PERSUADE.

PROCUREMENT. See ACTS; COLLUSION.

PROCUREMENT (DEFENCE). Stat. Def., Defence Reform Act 2014 s.1.

PRODUCE. “The ‘produce’ of capital employed in trade is, all that the capital produces; i.e. whether in the shape of interest or profits allowed” (per Wood V.C., *Johnston v Moore*, 27 L.J. Ch. 455, 456); and accordingly, a direction to pay to A for life “the rents, dividends, and produce” of an estate consisting partly of capital in a partnership, will give to A the profits on that capital, so long as the capital is properly employed in the business of partnership (*Johnston*; see further *Straker v Wilson*, 6 Ch. 503; *Re Hammersley*, 81 L.T. 150). So, where there is a request of residuary personality with a direction to sell and invest and to pay the income of such investments to A for life, with remainders over; and then there is a power to POSTPONE sale with a direction that, until sale, “the yearly produce” of the personality “shall be deemed annual income”; A is entitled to so much income, and no more, as the property in its actual state produces (*Rowlls v Bebb* [1900] 2 Ch. 107). In these and such like cases (see hereon 2 Jarm. (8th edn), 1218 et seq.), the rule in *Howe v Dartmouth* (7 Ves. 137) is displaced—a rule which lays down, as a general proposition, where personal property is bequeathed for life, with remainders over, it is to be converted or is to be considered as converted, and the proceeds invested, the tenant for life being entitled to income on the capital as so ascertained or assumed whether it be against his interest or in his favour (*Rowlls v Bebb*, above)—an exception being a real security which will be retained *in specie* if, after inquiry, such retention is seen to be for the benefit of all parties. The above-stated rule in *Howe v Dartmouth* (and its corollary established by *Re Chesterfield*, 24 Ch. D. 643, cited CURRENT) has no application to funds subject to the trusts of a marriage settlement (*Re Van Straubenzee* [1901] 2 Ch. 779; *Slade v Chaine* [1908] 1 Ch. 522); see further SPECIE; POSTPONE; *Re Barrett* [1925] W.N. 143; see now Law of Property Act 1925 (c.20) s.28, and *Re Trollope* [1927] 1 Ch. 596. See PROFITS; RENTS; INTEREST.

In a charterparty containing an agreement to ship at A, “a full cargo of produce”, “produce” means “anything produced by the country in the neighbourhood of the port of lading, and being an ordinary subject of importation” (per Maule J., *Warren v Peabody*, 8 C.B. 800). Cp. MERCHANDISE.

“The expression ‘produce of mines or minerals’ does not necessarily mean produce in its native state; coke may be such produce, although by combustion its chemical nature is changed” (MacS. (5th edn), 16, citing *Bowes v Ravensworth*, 15 C.B. 518, 523).

“Free annual income and produce”: see *Re Strain*, 30 S.L.R. 906, cited FREE ANNUAL.

“Produce of... agricultural land” (Vehicles (Excise) Act 1971 (c.10) Sch.4 Pt 1 para.9(1)) did not, in this case, cover manure (*McKenzie v Griffiths Contractors (Agricultural)* [1976] R.T.R. 140). Nor did it cover carcasses after they had been processed by a butchery firm (*Cambrian Land v Allan* [1981] R.T.R. 109).

“Produced in the United Kingdom” (Alcoholic Liquor Duties Act 1979 (c.4) s.54). The blending of two imported wines of different strengths, and therefore producing a third different from each of them, was held not to constitute “production” of wine within the meaning of this section (*R. v Customs and Excise Commissioners, Ex p. Cinzano (UK)* [1985] 1 W.L.R. 484).

“To produce” a thing to a person, *semble*, means to show it to him personally, and does not involve the idea that the possession of it is to be parted with; for the holder of a bill of sale to ask the grantor to send him the last receipt for rent is not to ask the

PRODUCED

grantor to “produce” it to him within the Bills of Sale Act 1882 (c.43) s.7(4) (*Ex p. Wickens* [1898] 1 Q.B. 543, cited MAINTENANCE, at end). See further REASONABLE EXCUSE.

The words “produced to the court” in s.52(4) of the Betting, Gaming and Lotteries Act 1963 (c.2) do not require the gaming machines to be brought into court. It is sufficient to identify them to the court (*R. v Edmonton Justices, Ex p. Stannite Automatics* [1965] 1 W.L.R. 984).

Semble, a vendor does not “produce” a good title until he has verified it (*Parr v Lovegrove*, 6 W.R. 709).

“The produce of the deposits” (Trustee Savings Bank Act 1981 (c.65) s.1(3)). The “produce” within the meaning of this section is restricted to the amount of the deposits and interest contractually due under the contracts of deposit and does not require the bank to pay over any increase in the assets of the bank attributable to the employment of the deposits in their business (*Ross v Lord Advocate* [1986] 3 All E.R. 79).

“Shall produce the warrant to him” (Police and Criminal Evidence Act 1984 (c.60) s.16(5)(b)). For the purposes of this section a warrant card was “produced” when the occupier was given an opportunity to inspect it (*R. v Longman* [1988] 1 W.L.R. 619).

“Produces goods” (Value Added Tax Act 1983 (c.55) Sch.2 para.2). The application of a permanent pleating process to fabrics made so significant a change in the character of the fabrics that it could be regarded as a production of goods for the purposes of this paragraph (*Customs and Excise Commissioners v Ali Baba Tex, The Times*, June 4, 1992).

Vendor shall not be required “to produce” title: see INVESTIGATING.

Stat. Def., Agriculture and Horticulture Act 1964 (c.28) s.2(10); Misuse of Drugs Act 1971 (c.38) s.37; Fair Trading Act 1973 (c.41) s.137; Restrictive Trade Practices Act 1976 (c.34) s.33(5).

See PRODUCT; PRODUCTION.

PRODUCED. “Produced” is a word “which has not got any exact legal meaning, but which requires to have an interpretation placed upon it in the statute in which it is used” (per Ribby L.J., *Hansfstaengl v American Tobacco Co* [1895] 1 Q.B. 347).

By the International Copyright Act 1886 (c.33) s.11, “‘produced’ means, as the case requires, published or made, or performed or represented”. Reading that in connection with the Berne Convention of September 5, 1887 (which prescribes that the country of origin of a literary or artistic work is that in which it is “first published”), a painting is “produced” (or, synonymously, “first produced”) within the Act in the country, not where it is “made” but where it is “first published” (*Hansfstaengl v American Tobacco Co*, above, approving *Hanfstaengl Art Co v Holloway* [1893] 2 Q.B. 1, and disapproving *Fishburn v Hollingshead* [1891] 2 Ch. 371). See PUBLICATION.

“Lawfully produced”, proviso to s.6 of 1886 Act, means produced “without contravening any existing copyright” (per Smith J., *Moul v Groenings* [1891] 2 Q.B. 443).

PRODUCER. “Producer” (British Egg Marketing Scheme (Approval) Order 1956 (No.2082) para.61): a company which bought hens for killing which frequently laid eggs which were sold was held to be a “producer of eggs” (*Joseph Mitchell (Lethine) v Clark*, 1963 S.L.T. 89).

A requirement to produce documents for inspection does not include a requirement to permit them to be removed from premises. But a requirement to permit inspection and copying may include an implied requirement to permit a document to be removed

from premises where it could not reasonably be copied without being removed (*Cantabrica Ltd v Vehicle Inspectorate* [2001] 1 W.L.R. 2288, HL).

See Cinematograph Films Act 1927 (c.29) s.32.

PRODUCT. “Corn, grass, or other product” growing on land (Distress for Rent Act 1737 (c.19) s.8); young trees are not distrainable under these words (*Clark v Gaskarth*, 8 Taunt. 431). See OTHER.

“Any preparation or other product”: see PREPARATION.

See PRODUCE.

PRODUCTION. “Plant, root, fruit, or vegetable production, growing in a garden, orchard, nursery-ground, hot-house, or conservatory” (Larceny (England) Act 1826 (c.29) s.42) did not include young fruit trees (*R. v Hodges*, Moo. & M. 341).

The “production” of literary or artistic work, as regards the International Copyright Act 1886 (c.33), is where it is “first published” (*Hanfstaengl v American Tobacco Co* [1895] 1 Q.B. 347, cited PRODUCED).

“The production of such a drug” (Misuse of Drugs Act 1971 (c.38) s.4(2)(b)). Conversion of one form of Class A drug into another form of the same genus might be “production” within the meaning of this section (*R. v Russell* (1992) 94 Cr.App.R. 351).

“Production of documents”: see DISCOVERY; INSPECTION.

“Production of food”: see FOOD.

PRODUCTIVE. “Directly productive of profit”: see DIRECTLY.

PROFANENESS. “Profaneness” in Sunday Observance Act 1780 (c.49) s.1, is used in the classical sense of “non-religious” (per Denman, as counsel, in *Baxter v Langley*, 38 L.J.M.C. 5).

By-law against profane or OBSCENE language: see *Strickland v Hayes* [1896] 1 Q.B. 290, and *Thomas v Sutters* [1900] 1 Ch. 10, cited PEACE.

PROFESS. “‘Profess’ is a strange expression to find in a criminal statute, and it is not defined. . . it is far from clear, in my opinion, whether it should be understood to denote an open affirmation of belonging to an organisation or an acknowledgement of such belonging. . .” (*Sheldrake v DPP* [2004] 3 W.L.R. 976 at 1003, HL per Lord Bingham of Cornhill).

See PRETEND.

PROFESSED GAMBLER. “The phrase ‘professed gambler’ would not, per se, be actionable” (per Watson B., *Barnett v Allen*, 27 L.J. Ex. 412). See BLACK; CHEAT; GAMBLER.

PROFESSED IN RELIGION. See ENTERED IN RELIGION.

PROFESSION. As to the meaning of “profession” within Finance (No.2) Act 1915 (c.89) s.39(c), see *Inland Revenue Commissioners v Maxse* [1919] 1 K.B. 647; *Inland Revenue Commissioners v North* 34 T.L.R. 535; see further *Esplen, Son & Swainstone Ltd v Inland Revenue Commissioners* [1919] 2 K.B. 731. The business of a stockbroker is not a profession within the meaning of the section: see *Barber & Sons v Inland Revenue Commissioners* [1919] 2 K.B. 222; nor is that of a photographer: see *Cecil v Inland Revenue Commissioners*, 36 T.L.R. 164; see further *Currie v Inland Revenue Commissioners* [1921] 2 K.B. 332.

Finance (No.2) Act 1939 (c.109) s.12(3): does not include leadership of a dance band (*Loss v Inland Revenue Commissioners* [1945] 2 All E.R. 683). A partnership engaged in making tenant-right valuations and estates management is engaged in a profession (*Escritt & Barrell v Inland Revenue Commissioners*, 177 L.T. 6).

PROFESSIONAL

“Profession or vocation” (Income Tax Act 1918 (c.40) Sch.D Case II): “I have yet to learn that a manager or managing director is carrying on a ‘profession or vocation’” (*Asher v London Film Productions* [1944] K.B. 133, per Lord Greene at 139). See now Income Tax Act 1952 (c.10) s.127; see also *Carr v Inland Revenue Commissioners* [1944] 2 All E.R. 163.

“Professional capacity”: an indemnity policy insuring a solicitor against loss arising by reason of neglect, etc. while acting in his professional capacity, was held not to cover loss sustained by the solicitor having inadvertently entered into a champertous agreement (*Haseldine v Hosken* [1933] K.B. 822).

As to defamatory words spoken of a man in the way of his profession, see *Bull v Vazquez* [1947] L.J.R. 551.

Stat. Def., Finance Act 1937 (c.54) s.19(3); Equality Act 2010 s.212.

See APPRENTICE; CALLING; CARRY ON; OCCUPATION.

PROFESSIONAL. Under the Race Relations Act 1976 there is no distinction between a worker and a professional (*Sadek v Medical Protection Society* [2004] 4 All E.R. 118, CA).

PROFESSIONAL ASSOCIATION. (Value Added Tax Act 1983 (c.55) Sch.6 Group 6 Item 1(b).) An association of directors of polytechnics in England and Wales is not “a professional association, membership of which is wholly or mainly restricted to individuals who have or are seeking a qualification appropriate to the practice of the profession concerned” (*Committee of Directors of Polytechnics v Customs and Excise Commissioners* [1992] S.T.I. 909).

PROFESSIONAL CHARGES. In a clause that a solicitor trustee may make “the usual professional charges”—though accompanied by a special direction that he shall be entitled to the same remuneration for all business done, attendance, time, and trouble, as if (not being a trustee) he were employed by the trustees—the solicitor trustee is only entitled to charge for business of a strictly professional character (*Re Chapple, Newton v Chapman*, 27 Ch. D. 584; *Re Loftus-Otway*, 100 L.T. 609, 610; *Re Beddingfield* 57 L.T. 332; *Harbin v Darby*, 29 L.J.Ch. 622; see further *Clarkson v Robinson* [1900] 2 Ch. 722; *Re Chalinder & Herington* [1907] 1 Ch. 58). But where a testator directed that a solicitor trustee might make “the usual professional, or other proper and reasonable charges for all business done and time expended in relation to the trusts of the will, whether such business should be usually within the business of a solicitor or not”, held, that a solicitor trustee might charge for business not strictly of a professional character (*Re Ames, Ames v Taylor*, 25 Ch. D. 72). See further *Re Fish* [1893] 2 Ch. 413, which case sets out a full clause hereon, and on which case see *Clarkson v Robinson*, above. Cp. LEGACY.

“Professional charges” (R.S.C. old Ord.65 r.27 (38B), see now Ord.62 r.25) “has a meaning of its own distinct from, and indeed contrasted with, ‘disbursements’; and I think the 16th part (mentioned in the rule) should be arrived at by taking the ‘professional charges’ by themselves without regarding the disbursements. This is in accordance with the Irish case, *Re Kennedy* [1904] 2 I.R. 417” (per Warrington J., *Re Mercantile Lighterage Co* [1906] 1 Ch. 491). See DISBURSEMENTS.

PROFESSIONAL CONDUCT. “The line drawn between professional conduct and personal conduct is conduct ‘arising from the exercise of medical or dental skills’ and ‘other’ conduct. How this distinction should in practice be applied must now be considered. The structure of the disciplinary code set out in Circular HC(90)9 is a classic case requiring a broad and purposive interpretation enabling sensible

procedural decisions to be taken. It would, for example, be surprising if a case where a doctor embarked on an intimate medical examination of a woman, which he knew to be wholly unnecessary, necessarily fell outside the scope of what may constitute professional misconduct. After all, in such a case, the doctor is using his position as a hospital doctor to perpetrate an act of serious professional misconduct. I cannot, therefore, agree with the ruling in *Saeed v Royal Wolverhampton Hospitals NHS Trust* [2001] I.C.R. 903 at 910 (para.24) that an indecent assault committed by a doctor during a medical examination cannot constitute professional misconduct within the code. It is a case of a doctor misusing his ostensible medical skills for improper purposes. In my view it falls within the scope of professional misconduct within the definition. Relying on the text of Circular HC(90)9 I take the view that a purposive construction, and common-sense considerations, point towards a broad interpretation of professional conduct.” (*Skidmore v Dartford & Gravesham National Health Service Trust* [2003] 3 All E.R. 292 at 300 HL per Lord Steyn.)

PROFESSIONAL FIREMAN. See Fire Brigade Pensions Act 1925 (c.47) s.23; does not include firemen who may be called upon to do other duties and who are, consequently, not wholly and permanently employed on fire brigade duties (*Whelan v Billingham Urban DC* [1937] Ch. 662).

PROFESSIONAL MISCONDUCT. “[24] I record also at this stage that although ‘professional misconduct’ is not defined in the [Legal Profession and Legal Aid (Scotland) Act 2007], counsel were agreed that these words have long been understood to have the broad meaning attributed to them by Lord President (Emslie) in *Sharp v The Law Society of Scotland* 1984 SC 129, where he said, delivering the opinion of the court, at pages 134 and 135: ‘There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct’.” (*Law Society of Scotland v The Scottish Legal Complaints Commission* [2010] Scot. C.S. CSH 79.)

See MISCONDUCT.

See SERIOUS PROFESSIONAL MISCONDUCT.

PROFESSIONAL RESPECT. See INFAMOUS CONDUCT.

PROFESSIONAL SECRECY. “Professional secrecy” is broader than “business secrets” (*Re The Organic Peroxides Cartel Appeal* [2008] 4 C.M.L.R. 4 (Case T-474/04) CFI).

PROFESSIONAL WITNESS. Stat. Def., in any proceedings, means a person: (a) who has given, or whom it is proposed will give, written or oral evidence in the proceedings in exchange for a fee; and (b) whose instruction by a party to the proceedings has been authorised by the court for the purposes of the proceedings (*Children, Schools and Families Act 2010* s.21).

PROFESSOR. “Professor” of the Universities of Oxford and Cambridge. Stat. Def., Oxford University Act 1854 (c.81) s.48; Cambridge University Act 1856 (c.88) s.50; Oxford University Act 1862 (c.26) s.11; Universities of Oxford and Cambridge Act 1877 (c.48) s.2.

PROFIT. “Are ‘profits’ anything more than an excrescence upon the value of the goods beyond the prime cost?” (per Ellenborough C.J., *Eyre v Glover*, 16 East 220); expected profits may be insured by an open policy (*Eyre*).

“There is no single definition of the word ‘profits’ which will fit all cases” (per Farwell J., *Bond v Barrow Haematite Steel Co* [1902] 1 Ch. 353, cited DIVIDEND). But

PROFIT

see judgment of Fletcher Moulton L.J., in *Re Spanish Prospecting Co Ltd* [1911] 1 Ch. 92 at 98, in which he held that the word “profits” has a well-defined legal meaning and in which he discussed that meaning at length. See also judgment of Lord Haldane in *John Smith & Son v Moore* [1921] 2 A.C. 13, 19. See also CAPITAL; *Wankie Colliery v Inland Revenue Commissioners* [1922] 2 A.C. 51.

“Profit earned by the company”, in an agreement to pay commission for every 5 per cent profit, etc., means profits divisible among shareholders, or net profits, and excess profits duty must be first deducted. “Profits means profits after deducting the expenses of earning them” (per Scrutton L.J. at 606, *Vulcan Motor and Engineering Co v Hampson* [1921] 3 K.B. 597).

“Profits available for dividend”: a provision in a debenture or note that the holder shall receive a specified proportion of the “profits available for dividend” was held not to prejudice the directors’ right under the articles to carry profits to reserve, and profits so dealt with are not “available for dividend” (*Long Acre Press Ltd v Odhams Press Ltd* [1930] 2 Ch. 196). See also *Re Buenos Ayres Great Southern Railway* [1947] Ch. 384. See AVAILABLE; REALISED.

Profits available for distribution as dividend in a private company were held to mean profits after excess profits duty under Pt III of the Finance (No.2) Act 1915 (c.89) had been deducted: see *Collins v Sedgwick* [1917] 1 Ch. 179.

In a winding-up, “profits” means the balance, if any, which remains after payment of liabilities and re-payment of the capital brought into the undertaking, with the accretions of such capital (*Birch v Cropper*, above; *Re Bridgewater Navigation*, above); but even in a winding-up, preference shareholders are entitled (in priority to paid-up capital) to be paid their arrears of dividends out of a balance of the revenue account, though such profits were undivided at the date of the liquidation (*Bishop v Smyrna & Cassaba Railway* [1895] 2 Ch. 265; see further *Bishop* [1895] 2 Ch. 596). But *Bishop v Smyrna & Cassaba Railway* has been questioned and was distinguished in *Re Odessa Water Works Co* [1901] 2 Ch. 190 fn.), and if that was not a sound distinction then *Re Odessa Water Works Co* is to be preferred to *Bishop v Smyrna & Cassaba Railway* (per Collins M.R. and Cozens-Hardy L.J., *Re Chrichton’s Oil Co* [1902] 2 Ch. 86, cited AVAILABLE). See also *Re Wharfedale Brewery Co* [1952] Ch. 913.

“Profits basis”: as to rating on the “profits basis”, see *Kingston Union Assessment Committee v Metropolitan Water Board* [1926] A.C. 331; *St. James’ & Pall Mall Electric Light Co v Westminster Assessment Committee* [1934] A.C. 33; *Racecourse Betting Control Board v Brighton Rating Authority* [1941] 2 K.B. 287; *Surrey County Valuation Committee v Chessington Zoo* [1950] 1 K.B. 640; *Metropolitan Water Board v Hertford Corporation* [1953] 1 W.L.R. 622.

In the case of mines, the cost of sinking pits is not, generally speaking, deductible from the gross profits (*Coltness Co v Black*, 6 App. Cas. 315); nor repayments out of royalties in respect of antecedent losses (*Broughton Co v Kirkpatrick*, 14 Q.B.D. 491).

So, an allowance for depreciation caused by the mine getting exhausted is not deductible, for the cost of buying the mine is a “sum employed as capital” for loss on which no allowance is made (*Alianza Co v Bell* [1906] A.C. 18). See further CAPITAL EMPLOYED.

“Profit and gains” [for the purposes of Sch.D] include remuneration for work done, services rendered, or facilities provided. They do not include gratuitous payments

which are given for nothing in return. Nor do they include profits in the nature of capital gains" (per Lord Denning in *Scott v Ricketts* [1967] 1 W.L.R. 828).

A personal eleemosynary gift to a meritorious curate, e.g. a donation, *honoris causa*, for having worked hard for 15 years, from the Curates' Augmentation Fund, is not "profits or gains" assessable to income tax (*Turner v Cuxson*, 22 Q.B.D. 150); *secus* of an allowance from that fund in augmentation of the income of a benefice or a curacy, made to a clergyman in virtue of his officer (*Herbert v McQuade* [1902] 2 K.B. 631). *Herbert v McQuade* was followed in *Poynting v Faulkner*, 93 L.T. 367. So, Easter offerings are assessable "profits or gains" (*Cooper v Blakiston* [1909] 2 K.B. 688; affirmed House of Lords, sub nom. *Blakiston v Cooper* [1909] A.C. 104). *Secus*, of a proportionate part of a church collection (*Turton v Cooper*, 92 L.T. 863); See PERQUISITE.

In *Carlisle and Silloth Golf Club v Smith* [1913] 3 K.B. 75, it was held that profits from green fees paid by non-members of a golf club for the privilege of playing on the course were "profits or gains" taxable under Sch.D.

In *Wiseburgh v Domville* [1956] 1 W.L.R. 312, the expression "profits or gains" in Sch.D. was held, on the facts, to include compensation paid to an agent for the premature termination of his agency agreement.

A voluntary pension is not a profit under Sch.D (*Stedeford v Beloe* [1932] A.C. 388). See ARISING.

"Profits of employment": payments which accrue to a person by virtue of his employment are profits of employment for the purposes of the Income Tax Acts Sch.E (see now Income and Corporation Taxes Act 1970 (c.10) s.181(1)) even if made voluntarily by the persons making them, e.g. the customary presents of cash given at Christmas to a huntsman by members of the hunt (*Wright v Boyce* [1958] 1 W.L.R. 832). A payment made by an employer to an employee for a consideration other than services was held not to be a profit of the employment (*Hochstrasser v Mayes* [1960] A.C. 376). See also *Davis v Harrison*, 96 L.J.K.B. 848; *Seymour v Reed* [1927] A.C. 554.

"Profits" (Finance Act 1965 (c.25) Sch.18 para.7). Where, in the case of an investment company, the question at issue was how the management expenses and trading loss were to be apportioned among the various classes of income, it was held that franked income was not "profit" within the meaning of this paragraph, but the chargeable gains were (*Craigengillan Estates Co v IRC* [1975] S.T.C. 233).

Policy on "profit on cargo" means the improved value of an actually loaded cargo at its destined port (*Halhead v Young*, 6 E. & B. 324, 325; *Royal Exchange Assurance v M'Swiney*, 14 Q.B. 646). See further *Chope v Reynolds*, 5 C.B.N.S. 642.

"Profits" of a partnership include the rise in value of partnership assets (*Robinson v Ashton*, L.R. 20 Eq. 25).

When trustees, under the powers of a will, postpone the sale of their testator's business, the net profits realised by their carrying on the business will belong to the person whom "the rents, profits, and income" of the testator's estate are, by the will, to be paid during postponement of conversion (*Re Chancellor*, 26 Ch. D. 42; *Re Crowther* [1895] 2 Ch. 56). See further PRODUCE. See also *Re Chaytor* [1905] 1 Ch. 233, and succeeding cases, cited POSTPONE.

"Profits" (Partnership Act 1890 (c.39) s.42(1)). These are the profits accruing in the ordinary course of carrying on the partnership business pending realisation, and do not

PROFIT

include any increase in value of the partnership assets which may have occurred since the dissolution (*Barclays Bank Trust Co v Bluff* [1982] Ch. 172).

In *Gordon v Rutherford* (2 L.J.O.S. Ch. 50) a direction as to a son sharing in the profits of testator's business was held not to be operative until after the son was admitted to partnership in the business.

"If a man seised of lands in fee, by his deed granteth to another the 'profit' of those lands, to have and to hold to him and his heires, and maketh livery *secundum formam chartæ*, the whole land itselfe doth passe; for what is the land but the profits thereof; for thereby vesture, herbage, trees, mines, and all whatsoever parcell of that land doth passe" (Co. Litt. 4B).

A lease of a manor "with all the profits" of a wood; held to pass only the profits such as pawnage, herbage, etc. and that the lessee could not cut the trees, nor do waste (*Anon.*, 4 Leon. 8). But a bequest of the profits of leaseholds was held to pass only the profits accruing from the death of the testator (*Tissen v Tissen*, 1 P. Wms. 503).

"Profits arising in my will" has been confined to income arising from realty (*Elgood v Cole*, 21 L.T. 80).

In an order against an innocent occupier to account for "rents and profits", the latter word means profits in the nature of rent and as arising from the land, and not such profits as may have been made by carrying on a business—e.g. a colliery—upon the land (*Re Morewood, Errington v Morewood* [1885] W.N. 51).

"Otherwise than for profit" (Value Added Tax Act 1983 (c.55) Sch.6 group 6 item 2). Profit means a surplus of income over expenditure, and it does not cease to be "profit" within the meaning of this schedule even if achieved by an educational establishment which ploughed the whole of it back into the business (*Customs and Excise Commissioners v Bell Concord Educational Trust* [1988] S.T.C. 143).

Stat. Def., Income and Corporation Taxes Act 1988 (c.1) s.6.

"Net profits": see NET.

"Office of profit", "place of profit": see OFFICE; PLACE.

"Prescribed rate" of profits: see PRESCRIBED.

"Share of profits": see SHARE.

Society "for any purpose of profit": see PURPOSE.

"Profits": Stat. Def., Taxes Management Act 1970 (c.9) ss.29, 33, 42; Income and Corporation Taxes Act 1970 (c.10) ss.155, 238, 527; Companies Act 1981 (c.62) Sch.3 para.48.

"Profits or gains": Stat. Def., Capital Gains Tax Act 1979 (c.14) s.155(5).

See ARISING; BUSINESS; CARRY ON; ELSEWHERE; GAINS; INCOME; POSSESSIONS; RECEIVED; ADVANTAGES; IN RECEIPT; NON-PROFIT-MAKING; OUT OF THE PROFITS; OWN PROFIT; PROFIT; RENT; RENTS AND PROFITS; SECRET PROFIT; EXCESS PROFITS TAX.

PROFIT À PRENDRE. "A profit *à prendre* is a right vested in one man of entering upon the land of another and taking therefrom a profit of the soil" (Add T. (8th edn), 393), e.g. a right of common.

"The profit must be something out of the land itself", as distinguished from making a profit by the use of the land; "and it is because it is something out of the land itself that a licence to a profit *à prendre* has been held to be within the Statute of Frauds as being an interest in land", e.g. to hunt or shoot game and take it away (*Thomas v Sorrell*, Vaugh. 351; *Webber v Lee*, 9 Q.B.D. 315, cited INTEREST IN LAND; and LICENCE), because "the animals on the soil were deemed to be part of the soil" (per

Collins M.R., *Warr v London CC* [1904] 1 K.B. 720). Cp. *Daly v Edwardes*, 83 L.T. 548, cited INTEREST IN LAND; *Edwardes v Barrington*, 85 L.T. 650.

The leading case on whether a grant is (a) a personal licence of pleasure, or (b) a profit à prendre, is *Norfolk v Wiseman*, Year Book, 12 Hen. 7, 25; 13 Hen. 7, 13, pl. 2; see hereon *Wickham v Hawker*, 10 L.J. Ex. 153; *Manning v Wasdale*, 6 L.J.K.B. 59; *Race v Ward*, 24 L.J.Q.B. 153; *Sutherland v Heathcote* [1892] 1 Ch. 475, cited LIBERTY OF WORKING. See further per Romer L.J., *Warr v London CC* [1904] 1 K.B. 722; *Chaplin v Smith* [1926] 1 K.B. 198.

A profit à prendre cannot be claimed by custom: see *Gateward's Case*, 6 Rep. 59(b).

See further as to a claim to a profit à prendre, *Clayton v Corby*, 5 Q.B. 415; *Bailey v Stevens*, 31 L.J.C.P. 226.

The nature of a profit à prendre is discussed in *Polo Woods Foundation v Shelton-Agar* [2009] EWHC 1361 (Ch).

See FREE LIBERTY; HUNTING; SERVANTS; TENEMENT.

PROFIT-SHARING ARRANGEMENTS. Stat. Def., Corporation Tax Act 2009 ss.476 and 710.

PROFITS. Stat. Def., Corporation Tax Act 2009 s.2.

PROGENITOR. The progenitors of King Henry VII held to be synonymous with his predecessors, and therefore to include Edward IV (*Meath v Winchester*, 3 Bing. N.C. 205).

See PREDECESSOR.

PROGENY. See INCREASE.

PROGRESS. “Progress of manufacture”: see STAGE.

PROGRESS CERTIFICATE. Certificates by an architect during the progress of works—called progress certificates—mean “that the sums advanced shall be accounted for by the contractor on the final settlement between him and the employer; they are to be treated as sums paid on account of whatever the contractor may eventually be entitled to recover, whether for original or additional works” (per Pollock C.B., *Lamprell v Billericay*, 3 Ex. 305). “The certificates I look upon as simply a statement of a matter of fact, namely, what was the weight, and what was the contract price, of the materials actually delivered from time to time upon the ground; and the payments made under those certificates were altogether provisional, and subject to adjustment, or readjustment, at the end of the contract” (per Cairns C., *Tharsis Co v M'Elroy*, 3 App. Cas. 1045; see also per Lord Blackburn, *Tharsis Co*, 1054, and per Lord Hatherley, 1048). See CERTIFICATE.

PROGRESSIVE RENT. Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17) s.12(1)(a): meant a rent under one single tenancy and a rent which automatically rose during the continuance of that tenancy (*Wheeler v Wirral Estates* [1935] 1 K.B. 294); the phrase was not a term of art and there was no implication that more than one step was necessary (*Bryanston Property Co v Edwards* [1944] K.B. 32, overruled on another point by *Regional Properties v Oxley* [1945] A.C. 347; *Tedman v Whicker* [1944] K.B. 112).

PROHIBIT. “A condition to . . . prohibit . . . the licensee from using” (Patents and Designs Act 1907 (c.29) s.38(1)): “prohibit” means that the condition will be such as to oblige the licensee in certain circumstances not to use the other person's goods (*Tool Metal Manufacturing Co v Tungsten Electric Co* [1955] 1 W.L.R. 761).

See INHIBIT.

PROHIBITED

PROHIBITED. A penalty on smuggling “prohibited” goods may extend to goods prohibited by a subsequent statute (*Att-Gen v Saggars*, 1 Price 182). Cp. “Convicted of felony”, under CONVICTED; FELON.

A person “prohibited from voting by any statute, or by the common law of Parliament” (Ballot Act 1872 (c.33) s.7) meant one who, from some inherent or (for the time) irremovable quality in himself or herself, had not the status of a parliamentary voter, e.g. a peer, a woman, a felon, or the holder of an office or employment which by statute or law incapacitated from voting (*Stowe v Jolliffe*, L.R. 9 C.P. 734; *Doulon v Halse*, 18 Q.B.D. 421); but the prohibition does not include a mere temporary disqualification, e.g. receipt of parochial alms, non-residence, non-occupation, insufficient qualification (*Stowe v Jolliffe*, above; *Hayward v Scott*, 5 C.P.D. 231). The disqualification of police was removed by Police Disabilities Removal Act 1887 (c.9) s.2, and Police Disabilities Removal Act 1893 (c.6). See BY LAW; INCAPACITATED.

“Prohibited weapon”: see DESIGNED.

PROHIBITED DEGREES. The “prohibited degrees of consanguinity or affinity” within which marriages are void are those enumerated in the Marriage Act 1949 (c.76) Sch.1, as amended by the Marriage (Enabling) Act 1960 (c.29) s.1.

(Adoption of Children Act 1926 (c.29) s.2(1)(b).) The phrase “within the prohibited degrees of consanguinity” as used in the Act defined the particular degrees of blood relationship between the proposed adopter and the infant proposed to be adopted, which had to exist in order to confer on the court the power or relaxing the prohibition contained in the subsection and was not limited to the cases where the parties were of opposite sex (*Re C.*; *Re The Adoption of Children Act 1926* [1938] Ch. 121).

PROHIBITED DEGREES OF RELATIONSHIP. Stat. Def., Human Fertilisation and Embryology Act 2008 s.58.

PROHIBITIVELY EXPENSIVE. “It is my view that ‘prohibitively expensive’ can only be construed in relevant terms. What may be prohibitively expensive to one person who is in receipt of the minimum wage will not be so to another person who earns a six figure salary. I also consider that account should be taken of the difference between someone who brings an application such as Mr Garner in *R (Garner) v Elmbridge BC* (2011) Env LR 10 for entirely altruistic reasons and in the public interest and someone who is motivated primarily by private interest, although the application may have the necessary public interest dimension. Also the approach to Government departments funded by the taxpayer will be necessarily different to commercial organisations dependant on private finance and individuals who have to rely on their own resources.” (*The Alternative A5 Alliance, Re Judicial Review* [2012] NIQB 97.)

PROJECT. A word of considerable potential breadth, not generally to be given a narrow or technical construction (*Feetum v Levy* [2005] EWHC 349, Ch).

For the meaning of “project” in the context of Council Directive (EEC) 92/43 (the Habitats Directive), see *R. (Boggis) v Natural England* [2008] EWHC 2954 (Admin).

“The words ‘plan’ and ‘project’ are not defined within the 2010 Regulations, nor are they defined in the Habitats Directive. However, there was no dispute between the parties that a ‘project’ concerns a concrete proposal whilst a ‘plan’ is something at a more general level. That is consistent with the approach in ODPM Circular 06/2005 (Biodiversity and Geological Conservation—Statutory Obligations and their Impact within the Planning System) concerned with earlier regulations (the Habitats

Regulations 1994). ‘Other projects’ extended beyond those requiring planning permission to ‘a current application for any kind of authorisation, permission, licence or other consent’ (see paragraphs 14 and 16).” (*Forest of Dean Friends of the Earth v Forest of Dean District Council* [2014] EWHC 1353 (Admin).)

“It is clear from the terms of the EIA Directive that just because two sets of proposed works may have a cumulative effect on the environment, this does not make them a single ‘project’ for the purposes of the Directive: the Directive contemplates that they might constitute two potential ‘projects’ but with cumulative effects which need to be assessed. The passages from *Ecologistas* to which I have referred also contemplate that two sets of proposed works may constitute different projects for the purposes of the Directive. What these passages are directed towards is avoiding a situation in which no EIA scrutiny is undertaken at all. However, if the two proposed sets of works are properly to be assessed as two distinct ‘projects’ which meet the threshold criteria in the Directive, there will be EIA scrutiny of the cumulative effects of the two projects. . . . In my judgment, however, none of the points made by Mr Kingston, whether taken individually or cumulatively, supports the conclusion that for the purposes of EIA scrutiny the link road is properly to be regarded as part of one combined ‘project’ involving also the development of the residential site. The most important feature of this case is that there is a strong planning imperative for the construction of the link road as part of the Grantham by-pass which has nothing to do with the development of the residential site. It is clear from the evidence that the residential site could not be granted planning permission unless the link road is constructed, but the converse is not true: there is a strong independent planning need for the construction of the link road (to complete the Grantham by-pass) whether or not the residential site is developed. In the context of this planning rationale, it makes obvious sense to regard the main function of the link road as being to form part of the Grantham by-pass and hence to regard the relevant project as the ‘construction of a road’ (in the terminology in s.10 of Annex II to the EIA Directive). Since the main functional purpose of the link road, as part of the Grantham by-pass, is to provide a new passage for traffic to avoid Grantham this approach to identification of the project is supported by the references to roads and other transportation projects such as railways, tramways and so on in Annex I and Annex II to the EIA Directive as set out above.” (*Larkfleet Ltd, R (on the application of) v South Kesteven District Council* [2015] EWCA Civ 887.)

See PLAN OR PROJECT.

PROJECTION. A local Act, one of the objects of which was to keep the pavements clear for passenger traffic, prohibited any projection, in front of any building, “over on upon” the pavement; held, that, “over” being used in association with “upon”, the prohibition did not forbid a projection so high as not to impede the traffic, and therefore that an oriel window “over” a pavement, which only impeded the access of light and air to the street, was not prohibited (*Goldstraw v Duckworth*, 5 Q.B.D. 275).

“Projection” (London Building Act 1894 (c. ccxiii) s.73(8)): see *Hull v London CC* [1901] 1 K.B. 580, where it was held that not everything attached to a building and extending beyond it— e.g. an illuminated advertisement case affixed to a building by iron brackets—was a “projection” within the section; in that case it was intimated that the test of such a “projection” was whether or not it formed part of the architectural structure of the building. But see *London CC v Illuminated Advertisements Co* [1904]

PROLONGATION

2 K.B. 886, cited *STRUCTURE*. Notwithstanding the criticism on it in that latter case, *Hull v London CC* was followed in *London CC v Schewzik* [1905] 2 K.B. 695. See also *Pears Ltd v London CC*, 75 J.P. 461.

Cp. *HANG*; *SIGN*.

“Overhanging trees or houses”: see *NUISANCE*; *LOP*.

See *OBSTRUCT*.

PROLONGATION. For prolongation of a patent, the phrase now is “extension of term of patent”: see *EXTENSION*.

“Prolongation of voyage”: these words in a marine insurance policy are used in the temporal as opposed to the geographical sense (*Brandt v Liverpool, etc.* [1924] 1 K.B. 575; *Union-Castle Mail Steamship Co v United Kingdom Mutual War Risks Association* [1958] 1 Q.B. 380).

PROLONGED EXAMINATION. “Cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation” (Judicature Act 1873 (c.66) s.57; Arbitration Act 1889 (c.49) s.14(b)—see now Judicature Act 1925 (c.49) s.89(b)): an action to recover damages for abstracting and heating water from a river is not within these words (*Ormerod v Todmorden Mill Co*, 8 Q.B.D. 667); nor, generally speaking, is an action for constructive total loss of a vessel (*Hamilton v Merchant Marine Insurance*, 58 L.J.Q.B. 544); but a complicated builder’s bill, wherein many items are disputed, is within them (*Ward v Pilley*, 5 Q.B.D. 427). An action relating to the mode of moving a ship in dock, having no cargo or ballast, may involve a scientific investigation (*Swyny v North Eastern Railway*, 74 L.T. 88).

(Judicature Act 1925 (c.49) s.89(b), as ground for referring action to official referee.) The scope of these words was discussed in *Charles Osenton & Co v Johnston* [1942] A.C. 130, where it was held that, whatever the precise scope might be, a judge ought not, generally, to exercise his discretion under the section so as to refer to an official referee (from whom there is no appeal on question of fact) an action involving a charge of fraud.

PROMISE. “‘Promise’ is when, upon a valuable consideration, we bind ourselves by our words to do or perform such an act as is agreed upon and concluded, upon which an action may be grounded; whereas, if it be without consideration it is called *nadum pactum, ex quo non oritur actio*” (COWEL). Cp. *NUDE CONTRACT*.

Although “promise” usually refers to a future time it may also mean “to assert confidentially, to declare”: see *Sweeney v Kennedy*, 82 L1. L.R. 294.

See *CONTRACT*; *OFFER*.

PROMISSORY NOTE. Stat. Def., Bills of Exchange Act 1882 (c.61) s.83. As to “specified person” in the definition, see *Storm v Stirling*, 23 L.J.Q.B. 298, cited *SECRETARY*. Cp. *BILL OF EXCHANGE*. See *FURTHER NEGOTIABLE*.

“The expression ‘promissory note’ includes any document or writing (except a bank-note) containing a promise to pay any sum of money” (Stamp Act 1891 (c.39) s.33(1), replacing Stamp Act 1870 (c.97) s.49(1)). A document is not within that definition unless it contains a promise to pay a definite and ascertained sum of money, which promise is substantially the whole contents of the document (*Mortgage Insurance v Inland Revenue Commissioners*, 21 Q.B.D. 352; see further *British India Steam Navigation Co v Inland Revenue Commissioners*, 7 Q.B.D. 165; *Brown v Inland Revenue Commissioners* [1895] 2 Q.B. 598, cited *MARKETABLE SECURITY*). But a clause in a promissory note by two or more that time may be given to either without

the other's consent, does not necessitate an agreement stamp nor prevent the document from being a good promissory note (*Yates v Evans*, 61 L.J.Q.B. 446); but, semble, the exact opposite was held in *Kirkwood v Smith* [1896] 1 Q.B. 582; but *Kirkwood v Smith* is now overruled, and *Yates v Evans* is approved by CA (*Kirkwood v Carroll* [1903] 1 K.B. 531).

See further, as to what is a promissory note, *Leeds v Lancashire*, 2 Camp. 205; *Bolton v Dugdale*, 2 L.J.K.B. 104; *Green v Davies*, 3 L.J. O.S.K.B. 185; *Smith v Dean*, 69 L.J.Q.B. 331. See also *Speyer v Inland Revenue* [1906] 1 K.B. 318, cited MARKETABLE SECURITY.

A document containing an undertaking to repay a loan "by" a certain date or "on or before" a certain date is not a "promissory note" within the meaning of s.83 of the Bills of Exchange Act 1882 (c.61). Undertakings in such terms as these have been held not to satisfy the definition in the section which requires that the signatory should undertake to pay on demand or at a "fixed or determinable future time" (*Williamson v Rider* [1963] 1 Q.B. 89, followed by *Claydon v Bradley* [1987] 1 All E.R. 522).

See PART.

PROMONTORY. See POINT.

PROMOTE. "The word 'promote' may carry various shades of meaning. Mr. Shepherd submitted that it is used here in the general sense of 'advance' and is apt to cover any steps designed to lead to the growth of Jet2's business. Mr. Leggatt submitted that it has the narrower meaning of 'market' and points to the use of the expressions 'promotional facilities', 'promotions' and 'promoting' in clauses 2(c) and (d), both of which are concerned with advertising and marketing. He submitted that the parties are likely to have used the word in the same sense in clause 1. I am not particularly impressed by the argument from consistency of use. This was a document apparently drafted by the parties themselves, probably without the benefit of legal advice. Clause 1 is worded in broad terms, as Mr. Leggatt often reminded us, and was intended to express the parties' intentions on a broad scale. In those circumstances I do not think that the narrower meaning of the word is to be preferred. The fact that the same or similar words are used in a narrower sense in the context of the more specific provisions of clauses 2(c) and (d) does not point strongly to an intention to adopt the same narrower meaning in the rather different context of clause 1. Although clause 1 no doubt looks forward to clause 2, its horizons are in my view much wider. I think the judge was right in his construction of the word 'promote' and that in this instance it bears the broader meaning of 'advance'." (*Jet2.com Ltd v Blackpool Airport Ltd* [2012] EWCA Civ 417.)

PROMOTE (LOTTERY). Stat. Def., Gambling Act 2005 (c.19) s.252.

PROMOTER. "First, Cockburn C.J. in *Twycross v Grant* (46 L.J.C.P. 636), defined a promoter to be 'one who undertakes to form a company with reference to a given project, and to set it going, and who takes the necessary steps to accomplish that purpose'. Bowen L.J. in *Whaley Bridge Printing Co v Green*, 5 Q.B.D. 109, says, 'The term promoter is a term not of law but of business, useful summing up in a single word a number of business operations, familiar to the commercial world, by which a company is generally brought into existence'. Then Lindley L.J., in *Emma Silver Mining Co v Lewis* (4 C.P.D. 396), says, 'With respect to the word promoter, we are of opinion that it has no very definite meaning. As used in connection with companies, the term promoter involves the idea of exertion for the purpose of getting up and starting a company, or what is called floating it, and also the idea of some duty

PROMOTER

towards the company imposed by or arising from the position which the so-called promoter assumes towards it'. All this is by no means satisfactory" (per Bacon V.C., *Re Great Wheal Polgooth Co*, 53 L.J. Ch 46). Referring to the passage in the judgment of Lindley L.J., which is italicised in the above extract, the V.C. went on to observe, "That is the most satisfactory of all these varying definitions that I have been able to find". See further Buckl. (12th edn), 103, 109; *Lydney Iron Co v Bird*, 33 Ch. D. 85; *Re Coal Economising Gas Co*, 1 Ch. D. 182; *Rooney v Palmer*, 9 Ir. L.R. 327; *Re Olympia* [1898] 2 Ch. 153. See also *Re Leeds & Hanley Theatres Co* [1902] 2 Ch. 809; SYNDICATE. But see now Companies Act 1985 (c.6) s.67.

"The promoters of the undertaking' shall mean the parties (whether company, undertakers, commissioners, trustees, corporations, or private persons) by the Special Act empowered to execute the works or undertaking" (Lands Clauses Consolidation Act 1845 (c.18) s.2); and as the phrase is used in s.133 of that Act, see *Wheeler v Metropolitan Board of Works*, L.R. 4 Ex. 303; *Stratton v Metropolitan Board of Works*, L.R. 10 C.P. 76; *Bristol Poor v Bristol*, 18 Q.B.D. 549, Cp. UNDERTAKER.

"Promoters" of a tramway (Tramways Act 1870 (c.78) s.42): see *Re Pontypridd Tramways Co*, 58 L.J. Ch. 536; 1870 Act ss.43 and 44, see *Marshall v South Staffordshire Tramways Co* [1895] 2 Ch. 36.

"Promooters", or rather 'promoters', are those who, in popular and penal actions, do prosecute offenders in their own name and the Kings, having part of the fines or penalties for their reward" (Cowel). See POPULAR ACTION; PENAL.

Stat. Def., Companies Act 1985 (c.6) s.67(3).

PROMOTER (PRIVATE BILL). Stat. Def., Parliamentary Costs Act 2006 s.18.

PROMOTING. "Promoting or procuring the election of a candidate" (Representation of the People Act 1949 (c.68) s.63(1)) means improving his chances of being elected, so that expenses incurred with a view to preventing the election of a candidate are incurred "with a view to promoting... the election of a candidate" even though there were more than two standing (*DPP v Luft*; *DPP v Duffield* [1976] 2 All E.R. 569). See also *R. v Hailwood* [1928] 2 K.B. 277.

PROMOTING WELFARE OF CHILD. See WELFARE OF CHILD.

PROMOTION. In order to acquire property "by promotion", e.g. a benefice or office (Representation of the People Act 1832 (c.45) ss.18, 26), the property had to accrue, as of right, by virtue of the promotion itself (*Foster v Mulhall*, 10 I.C.L.R. 532).

(Town and Country Planning Act 1947 (c.51) s.85(1).) The Crystal Palace is held upon trusts for "the promotion of industry commerce and art" and is a charity within s.85(1) (*Crystal Palace Trustees v Minister of Town and Country Planning* [1951] Ch. 132).

"Promotion or protection of the interests of the inhabitants of their area" (Local Government Act 1972 (c.70) s.222(1)). A local authority which moves to commit a defendant for breach of an injunction restraining him from cutting down trees in breach of a tree preservation order does so to "promote or protect the interests of the inhabitants of their area" within the meaning of this section (*Kent CC v Batchelor* (1977) 38 P. & C.R. 185). Local authorities have power to seek injunctions in their own name to restrain shopkeepers from unlawful Sunday trading, as such actions would be taken for the "promotion or protection" of the local inhabitants within the meaning of this section (*Stoke on Trent City Council v B&Q (Retail)* [1983] 3 W.L.R. 78).

“Promotion of education”: see EDUCATION; of science: see SCIENCE.

See GODLY LEARNING.

“Promotion money”: see FORMATION EXPENSES.

PROMPT DISPATCH. “Prompt dispatch in loading”, in a charterparty: see *Elliott v Lord*, 52 L.J.P.C. 23, which case, semble, shows that delay, even though caused by an insufficiency of cargo at the port of loading, is a breach of an obligation for “prompt dispatch”.

PROMPTLY. “There is clearly much force in the point which my noble and learned friend makes that the obligation to apply ‘promptly’ is, without more, too uncertain to satisfy the requirements of convention law. But in my opinion the factors which are relevant to a plea of mora, acquiescence and taciturnity in Scottish practice provide an appropriate context for the taking of decisions on this point. They provide a sufficiently clear and workable rule for the avoidance of undue delay in the bringing of these applications [for judicial review], as experience of the operation of judicial review in Scotland has shown.” (*R. (Burkett) v Hammersmith LBC* [2002] 3 All E.R. 97 at 117, HL per Lord Hope.)

PROOF. “The word ‘proof’ seems properly to mean any thing which serves, either immediately or mediately, to convince the mind of the truth or falsehood of a fact or proposition; and as truths differ, the proofs adapted to them differ also. ‘Proof’ is also applied to the conviction generated in the mind by proof properly so called” (*Best on Evidence*, s.10). See definitions referred to under EVIDENCE.

The “proofs” in a brief to counsel, are the written statements of the facts which the witnesses for his client are respectively expected to state on oath at the trial; “taking a proof”, is the act of writing down (generally from the witness’ lips) such a statement with the view to placing it among the “proofs”.

If a vessel in collision is, at the time, under compulsory pilotage and does not stay by the other as provided by the Merchant Shipping Act 1894 (c.60) s.422, still subs.(2) of that section does not apply, because the compulsory pilotage is “proof to the contrary” against deeming the collision to be caused by the master (*The Queen*, L.R. 2 A. & E. 354; *The Sussex* [1904] P. 236). See Maritime Conventions Act 1911 (c.57) s.4, and Pilotage Act 1913 (c.31) s.15.

“Proof of the identity”, for the purpose of the Prevention of Crimes Act 1871 (c.112) s.18, does not mean conclusive proof, but such evidence as will entitle a jury to find that the identity is proved: see *Martin v White* [1910] K.B. 665.

“20. ‘Proving’ a debt is a technical term in the Insolvency Rules. It is dealt with by rule 4.73. In the case of a winding up by the court ‘a person claiming to be a creditor of the company and wishing to recover his debt in whole or in part’ must submit his claim in writing to the liquidator. In the case of a voluntary winding up the liquidator may require ‘a person claiming to be a creditor of the company and wishing to recover his debt in whole or in part’ to submit his claim in writing. Rule 4.73(3) says:

‘A creditor who claims (whether or not in writing) is referred to as “proving” his debt; and a document by which he seeks to establish his claim is his “proof”.’” (*Joint Administrators of LB Holdings Intermediate 2 Ltd v Lehman Brothers Holdings Inc* [2015] EWCA Civ 485.)

“Burden of proof”: see ONUS.

“Clear and positive proof”: see CLEAR.

“Proof made upon oath”: see OATH.

“Satisfactory proof”: see SATISFACTORY.

PROPER

Stat. Def., Alcoholic Liquor Duties Act 1979 (c.4) s.2.

See PROVE; CONCLUSIVE EVIDENCE; SUFFICIENT EVIDENCE.

PROPER. "Shall think proper": see MAY; see also judgment of Cockburn C.J., *South Eastern Railway v Railway Commissioners*, 5 Q.B.D. 217; but see same case, reversed 6 Q.B.D. 586.

The amount necessary for "proper" maintenance of a child depends upon the fortune of the parent and the number of his children; it may be greater or less than that required for "adequate" maintenance (*Bosch v Perpetual Trustee Co* [1938] A.C. 463).

"Proper" is also used in the sense of "own", e.g. a London solicitor speaks of his "proper" business as distinguished from what he does as agent for a country solicitor; so, in the phrase of parishioners going to and from "their proper parochial church". See also IN HIS PROPER PERSON.

A proper case for service out of the jurisdiction (R.S.C. Ord.11 r.4): see *Korner v Witkowitz* [1950] 2 K.B. 128.

"Proper for the attainment of justice" (R.S.C. Ord.62 r.28(2)) means reasonably incurred, and is thus more than just necessarily incurred (*Francis v Francis and Dickenson* [1956] P. 87). The travelling costs of a solicitor himself attending court instead of employing a London agent, were held to be "proper for the attainment of justice" within the meaning of this rule (*Garthwaite v Sherwood* [1976] 1 W.L.R. 705). See also NECESSARY.

See FIT; REASONABLE AND PROPER.

PROPER ACCOUNTS. Semble, that the "proper accounts" to be rendered by a working railway company to an owning railway company, within a working agreement of a railway, are half-yearly accounts showing in detail, from each station of the railway, the gross receipts from all traffic conveyed over the railway, and the deductions made or claimed to be made therefrom (*Bedford & Northampton Railway v Midland Railway*, 4 Ry. & Can. Tr. Cas. 170).

PROPER AND CONVENIENT. Public conveniences in "proper and convenient situations" (Public Health Act 1875 (c.55) s.39): see *Leyman v Hessle*, 67 J.P. 56; *Mayo v Seaton*, 68 J.P. 7.

PROPER AND NECESSARY POWERS. The reservation in the Land Tax Redemption Act 1802 (c.116) s.60 of mines and minerals under land conveyed, for the purpose of redeeming land tax, together with "all proper and necessary powers of opening and working the same" did not include a reservation of the right to let down the surface (*Warwickshire Coal Co v Coventry Corp* [1934] Ch. 488).

PROPER AND WORKMANLIKE. A covenant, in a mining lease, to work in "a proper and workmanlike manner", though open to parol evidence to explain its local meaning, does not, prima facie, mean in such a manner only as shall be most advantageous to the lessor; "but it means in such a manner as shall not be simply an attempt to get out of the earth as much mineral as can be got for the particular purpose of the lessee, regardless of any ordinary or workmanlike proceeding" (per Hatherley C., *Lewis v Fothergill*, 5 Ch. 108).

PROPER CAUSE. "Proper cause" does not mean the same as "just cause", "proper" meaning only "fit, apt, suitable", whereas "just" has a wider meaning involving equitable considerations (*R. v Arthurs, Ex p. Port Arthur Shipbuilding Co* [1967] 1 O.R. 272).

PROPER CHURCH. See PAROCHIAL CHURCH.

PROPER CLAUSES AND POWERS. The phrase “proper clauses” in an agreement for a lease does not seem quite synonymous with “usual clauses”. In *Eadie v Addison* (52 L.J.Ch. 82, 83), Pearson J. said: “Then it is said that the word is ‘proper’, not ‘usual’. But that argument seems to me to have great weight on behalf of the plaintiff, because a clause against underletting which might have been proper with regard to the publican to whom the house was to be let, would be manifestly improper with regard to Mr Eadie, who was known to be a brewer and to have no intention whatever of going into the trade of publican”. Accordingly, specific performance of an agreement to lease, with “proper causes”, a public-house to a brewer who it was known was not going to occupy it himself, was decreed without a clause against underletting. But could such a clause be insisted on even if the intended lessee were an occupying publican? Can “proper” in such a case really be distinguished from “usual”?

See *USUAL*, and especially the cases of *Church v Brown*, 15 Ves. 258, and *Hodgkinson v Crowe*, 44 L.J.Ch. 682, there cited.

A power to appoint new trustees is “a proper and reasonable power” (*Lindow v Fleetwood*, 6 Sim. 152); but, semble and speaking generally, a power of sale or exchange is not (Lewin (10th edn), 137, citing *Brewster v Angell*, 1 Jac. & W. 625; *Horne v Barton*, Jac. 437). See further as to “proper powers” in a settlement, Settled Land Act 1882 (c.38) ss.3, 4, 6 et seq.; Conveyancing Act 1881 (c.41) ss.42, 66; but see now Settled Land Act 1925 (c.18) ss.38–40, 41 et seq. See *NECESSARY*.

PROPER CONTROL. “Proper control of movement” (Mines and Quarries Act 1954 (c.70) s.49(5)) means such control as will result in a condition of stability which will ordinarily result in safety (*Venn v National Coal Board* [1967] 2 Q.B. 557). See *CONTROL*.

PROPER COSTS. See *COSTS*.

PROPER COURSE. “Due and proper course of business”: see *Dartford Brewery Co v Till*, 95 L.T. 636, cited *KEEP*.

PROPER FACILITIES. See *FACILITIES*.

PROPER GROUND. “Proper ground” (Local Government Act 1933 (c.51) s.230(1)) is not necessarily restricted to the two grounds mentioned earlier in the subsection (*Annison v St. Pancras BC District Auditor* [1962] 1 Q.B. 489).

PROPER INSTRUMENT. “Proper instrument of transfer” (Companies Act 1948 (c.38) s.75) is an instrument such as would attract stamp duty and is not limited to an instrument which is necessarily in complete accordance with the company’s articles of association (*Re Paradise Motor Co* [1968] 1 W.L.R. 1125).

PROPER LAW. The “proper law” regulating the disposition under or by reason of which property situated out of Great Britain passes on death, for the purposes of s.28(2) of the Finance Act 1949 (c.47), is the law from which the validity of the disposition stems. In the case of movable property this is the law of the testator’s domicile (*Re Levick’s Will Trusts* [1963] 1 W.L.R. 311).

PROPER MIXTURE. A proviso exonerating a lessee of iron mines from working them if the iron-stone therein found will not “with a proper mixture” make good common pig-iron, does not mean that the “proper mixture” should necessarily be procurable on the premises (*Foley v Addenbrooke*, 14 L.J.Ex. 169).

PROPER NAME. As a *TRADE-MARK*: see *Re Colman* [1894] 2 Ch. 115, cited *NAME*.

PROPER

PROPER OFFICER. The “proper officer of the court” (Costs in Criminal Cases Act 1952 (c.48) s.5(5), as amended by the Courts Act 1971 (c.23)) is, in respect of costs awarded by magistrates to a prosecutor, the magistrates’ clerk (*R. v Chertsey Justices, Ex p. Edwards & Co (The Provision Market)* [1973] 1 W.L.R. 1545).

(County Court Rules 1981 Ord.1 r.3.) “Proper officer” could only mean the district judge or chief clerk of the county court or other officer acting on his behalf (*Kent v Grant* [1997] 7 C.L. 79).

“Proper instrument of transfer”: see INSTRUMENT.

PROPER OUTGOINGS. See OUTGOING; WORKING EXPENSES.

PROPER PARTY. A foreign defendant who has a good defence in law to the plaintiff’s claim, on facts which are not in dispute, cannot be a “proper party” to the action within the meaning of R.S.C. Ord.II v.1(1)(j) (*Multinational Gas and Petrochemical Co v Multinational Gas Services* [1983] Ch. 258).

PROPER PERSON. See IN HIS PROPER PERSON.

PROPER PROCEEDINGS. “Proper proceedings” (Matrimonial Causes Act 1965 (c.72) s.34(1)) are other than and separate from the matrimonial suit in which the issue arises (*D. (J.R.) v D. (J.M.)* [1971] P. 312).

PROPER STATE OF REPAIR. See REPAIR.

PROPER WORKING ORDER. A landlord’s obligation to keep an installation in “proper working order” under s.11 of the Landlord and Tenant Act 1985 is an obligation to ensure that the installation is so designed and constructed as to be capable of performing its function at the commencement of the tenancy. The obligation is satisfied if the installation is able to function under conditions of supply which could reasonably be expected, but mid-term adaptation to meet changes in supply might also be required to satisfy the obligation (*O’Connor v Old Etonian Housing Association Ltd* [2002] 2 W.L.R. 1133, CA).

PROPER WORKS. See CONVENIENCE.

PROPERLY. An action is “properly brought” (R.S.C. Ord.11 r.1(j)) if there is a real issue which the plaintiff may reasonably ask the court to try (*Ellinger v Guinness, Mahon & Co* [1939] 4 All E.R. 16). See also *Tyre Improvement Commissioners v Armament Anversois Societe Anonyme; The Brabo* [1949] A.C. 326. See also *Witted v Galbraith* [1893] 1 Q.B. 577. Where a foreign company brings an action in England and the defendant brings a counterclaim served on the company’s English solicitors, the counterclaim has been “properly brought against a person duly served within the jurisdiction” within the meaning of R.S.C. Ord.11 r.1(1)(j) (*Derby & Co v Larsson* [1976] 1 W.L.R. 202).

“Legal or equitable claim properly brought forward” (Supreme Court of Judicature Act 1873 (c.66) s.24(7)); see *Warter v Warter*, 15 P.D. 35; but see now Supreme Court of Judicature (Consolidation) Act 1925 (c.49) s.43.

A trustee is entitled to costs and charges “properly incurred”; in that proposition “properly” means reasonably, as well as honestly (per Bowen L.J., *Re Beddoe* [1893] 1 Ch. 547), which case shows that, before embarking in a doubtful litigation, trustees should get the sanction of the court. See further *Re Davis*, 57 L.J. Ch. 3; *Re Llewellyn*, 37 Ch. D. 327; *Re Smith*, 64 L.T. 821; *Re Bennett* [1896] 1 Ch. 778.

“Properly stamped”: see *Allen v Pullay*, 46 L.T. 435.

“Interest and expenses properly paid or incurred” (Finance Act 1894 (c.30) s.9(5)); see *Re Howes* [1903] 2 Ch. 69, cited ESTATE DUTY.

“Properly and conveniently worked” coal mines: see *Re Tilmanstone (Kent) Collieries Application*, 44 T.L.R. 167.

“Properly addressing” (Interpretation Act 1889 (c.63) s.26). A summons sent to an address with which the dependant had had no connection for five months was not “properly” addressed within the meaning of this section (*White v Weston* [1968] 2 Q.B. 647).

“Expenses of the trustees . . . properly chargeable to income” (Finance Act 1973 (c.51) s.16(2)(d)) means properly chargeable under the general law, and does not cover other expenses incurred by the trustees even though specifically authorised by the settlement (*Carver v Duncan*; *Bosanquet v Allen*, *The Times*, July 24, 1984).

“Properly payable” (Wages Act 1986 (c.48) s.8(3)). Where there is a dispute as to what wages are “properly payable” within the meaning of this section the Employment Appeal Tribunal has jurisdiction to determine the matter by applying common law and relevant statutory provisions (*Greg May (CF & C) v Dring* [1990] 1 R.L.R. 19; *Kournavous v JR Masterson & Sons* [1990] I.C.R. 387). Where there was an agreement to pay a sum in lieu of notice and the only dispute was as to which of two sums was appropriate, the claim was for a liquidated sum “properly payable” as wages within the meaning of s.8(3) rather than for unliquidated damages for breach of contract (*Janstorp International (UK) v Allen* [1990] I.C.R. 779).

“Properly interested person” (Coroners Rules 1984 (SI 1984/552) r.20(2)(h)). At an inquest the brother of the deceased is not necessarily a “properly interested person” within the meaning of this rule (*R. v Portsmouth Coroner, Ex p. Keane* [1990] C.O.D. 7).

“Not properly executed” (Consumer Credit Act 1974 (c.39) s.61). A consumer hire agreement which failed to bring to the attention of the hirer the duties imposed on him by the agreement and his liability to pay accelerated payments in the event of breach was held to have been “not properly executed” within the meaning of this section (*Rank Xerox v Hepple* [1993] 11 C.L. 73).

A landlord will have acted “properly” in the discharge of his obligation to insure premises against specified risks in some insurance office of repute if the insurance rate is representative of the market rate, or the contract was negotiated at arm’s length and in the market-place (*Havenridge v Boston Dyers* [1994] 49 E.G. 111).

“Action properly brought”: see ACTION.

“Fairly and properly” to work minerals: see FAIRLY.

Outgoings “properly chargeable” against arrears of rents: see OUTGOING.

“Properly maintained”: see MAINTAINED.

PROPERLY RECOVERABLE. See *Admiral Management Services Ltd v Para-Protect Europe Ltd* [2003] 2 All E.R. 1017, Ch.

PROPERTY. “Property” is the generic term for all that a person has dominion over and its two main divisions are real and personal; see *Re Earnshaw-Wall* [1894] 3 Ch. 156. Care should be taken to distinguish “property” from the “power” of a person to appoint to himself; see *Re Bradshaw* [1902] 1 Ch. 447. “Property” is a comprehensive term indicative of every possible interest which a party can have: see *Morrison v Hoppe*, 4 D.G. & S. 234; *Termes de la Ley*; Cowel.

A gift in a will of “property” will pass everything belonging to the testator at his death (or over which he had general power of appointment, Wills Act 1837 (c.26) s.2). *Tyrone v Waterford*, 29 L.J.Ch. 486.

PROPERTY

For the purposes of taxation, “property” in the context of the Income and Corporation Taxes Act 1988 (c.1) s.18(1) and Sch.D is used in a wide sense and may be defined as anything a person possesses (*Jarvis (Inspector of Taxes) v Curtis Brown Ltd* (1929) 73 Sol. J. 819). See also *De Voil v Welford Gravels* [1962] 3 W.L.R. 489.

In the context of companies:

“Property” with which the original company has power to deal in a reconstruction or amalgamation without the consent of some third party (Companies Act 1985 (c.6) s.427) does not include non-transferrable contracts (*Nokes v Doncaster Amalgamated Collieries* [1940] A.C. 1014).

“Dispositions of the property of the company” (Companies Act 1985 (c.6) s.522) can include bank notes drawn from a company’s account (*Re Leslie J Engineers Co (In Liquidation)* [1976] 1 W.L.R. 292).

In the context of the family:

For what constitutes “property” of a married woman see Law Reform (Married Woman and Tortfeasors) Act 1935 (c.30) s.2.

“Any property” (Matrimonial Causes Act 1973 (c.18) s.37(2)) could include property abroad, (*Hamlin v Hamlin* [1985] 2 All E.R. 1037) and may include shares in a company but not its assets, (*Crittenden v Crittenden* [1990] 2 F.L.R. 361). See also *Hale v Hale* [1975] 1 W.L.R. 931; *W. v W.* [1975] 3 W.L.R. 752; *Thompson v Thompson* [1975] Fam. 25.

“Such property as may be so specified” (Guardianship of Minors Act 1971 (c.3) s.11B as inserted by Family Law Reform Act 1987 (c.42) s.12) can include a father’s joint tenancy with the mother (*K. v K.* [1992] 1 W.L.R. 530).

In the context of theft:

“Money or other property” (Theft Act 1968 (c.60) s.34(2)(a)) includes:

(a) liquid in a syringe (*R. v Evans (R.) The Times*, December 1, 1987);

(b) a bank’s equitable interest in drafts it has issued (*R. v Hamid Shadrokh-Cigari* [1988] Crim. L.R. 465).

“Other intangible property” (1968 Act s.4(1)) includes a sum represented by a figure in a bank account (*R. v Crick, The Times*, August 18, 1993).

In the context of the Insolvency Act 1986 (c.45), “property”:

(a) for the purposes of ss.283(1) and 306(1) does not include damages received after the adjudication of bankruptcy (*Re Cambell (a Bankrupt)* [1996] 3 W.L.R. 626);

(b) for the purpose of s.436 does not include a non-assignable periodic tenancy (*London City Corp v Brown* [1990] 22 H.L.R. 32) but includes property held under a lease, (*Bristol Airport Plc v Powdrill* [1990] 2 All E.R. 493);

(c) for the purpose of s.234 applies only to tangible property and not choses in action (*Welsh Development Agency v Export Finance Company* [1992] B.C.C. 270);

(d) for the purpose of Sch.4 para.6 does not include the fruits of wrongful trading (*Re Oasis Merchandising Ltd* [1997] 2 W.L.R. 764);

(e) for the purpose of s.283 does not include an unsevered interest in a joint tenancy (*Re Palmer (deceased) (a Debtor)* [1994] 3 All E.R. 835).

For the purpose of the 1986 Act s.315, “onerous property” includes a license to assign a lease containing covenants (*MEPC v Scottish Amicable Life Assurance Society; Eckley (Third Party)* [1993] 5 C.L. 219).

“Property recovered or preserved” (Solicitors Act 1974 (c.47) s.73) should be construed widely (*Fairfold Properties v Exmouth Docks (No.2)* [1993] 2 W.L.R. 241)

and for the purpose of Legal Aid Act 1988 (c.34) s.16 includes a beneficial interest in property where there has been an order postponing sale, (*Parkes v Legal Aid Board* [1996] 4 All E.R. 271).

In the context of an insurance policy “property used by the insured at the premises” includes architects drawings which are an integral part of the development work (*Glengate-G Properties Ltd v Norwich Union* [1996] 2 All E.R. 487).

For the purpose of Administration of Estates Act 1935 (c.23) s.49, “property . . . not disposed of” includes any interest in property coming into existence as a result of a gap in the trusts in a will (*Re Mc Kee* [1931] 2 Ch. 145; *Re Thornber* [1937] Ch.29; *Re Plowman* [1943] Ch. 269).

For the purpose of the Powers of the Criminal Courts Act 1973 (c.62) s.43(1) “any property . . . in his possession” does not include real property (*R. v Khan (Sultan Ashraf)* [1982] 1 W.L.R. 1405).

For the purpose of the State Immunity Act 1978 (c.33) s.95, “property” includes a credit balance on a bank account (*Alcom v Republic of Columbia* [1983] 3 W.L.R. 906).

For the purpose of the Mental Health Act 1983 (c.20) s.95, “property” includes papers held by a next friend in connection with litigation (*Re E. (a Mental Patient)* [1985] 1 W.L.R. 245).

For the purpose of the Stamp Act 1891 (c.39) s.54, “property” includes an option to purchase land (*George Wimpey & Co v IRC* [1975] 1 W.L.R. 995).

A milk quota is property within the definition of s.436 of the Insolvency Act 1986 and is capable of forming the subject matter of a trust, although there are limits on how this kind of property can be held or conveyed (*Swift v Dairywise Farms Ltd* [2000] 1 All E.R. 320, Ch).

A waste management licence under the Environmental Protection Act 1990 (c.43), being transferable and therefore valuable, was property within s.436 of the Insolvency Act 1986 (c.45).

For consideration of the breadth of the term “property” in insolvency proceedings (as used in s.436 of the Insolvency Act 1986 (c.45)), see *Dear v Reeves* [2001] 3 W.L.R. 662, CA and New Law Journal, August 10, 2001, pp.1219–20.

A right to dispose of valuable assets as one thinks fit is a valuable right and amounts to “property” within the meaning of s.272 of the Inheritance Tax Act 1984 (*Melville v Inland Revenue Commissioners* [2002] 1 W.L.R. 407, CA).

Items bearing false trade marks or enabling false marks to be applied to goods are property from which a person derives benefit for the purposes of s.71(4) of the Criminal Justice Act 1988 (*R. v Davies* [2004] 2 All E.R. W6, CA).

“The context I am considering is the transfer of ‘property, rights or liabilities’, and in this context it would be anomalous to construe ‘property’ as meaning something physical, when there is a clear non-physical genus.” (*R. (Lord Chancellor) v Land Registrar* [2005] EWHC 1706 (Admin) at [23] per Stanley Burnton J.)

In s.14(4) of the State Immunity Act 1978 “property” includes all real and personal property and embraced any right or interest, legal, equitable, or contractual in assets that might be held by a state or any “emanation of the state” or central bank or other monetary authority (*AIG Capital Partners Inc v Republic of Kazakhstan (National Bank of Kazakhstan intervening)* [2005] EWHC 2239 (Comm)).

Stat. Def., s.112(12) of the Financial Services and Markets Act 2000 (c.8) (“includes property, rights and powers of any description”).

PROPERTY

Stat. Def., “includes property wherever situated and whether real or personal, heritable or moveable, and things in action and other intangible or incorporeal property” (s.121 of the Terrorism Act 2000 (c.11)).

Stat. Def., “includes rights and interests of any description” (s.2(3) of the Care Standards Act 2000 (c.14)).

Stat. Def., Sch.1 para.17 to the Anti-terrorism, Crime and Security Act 2001 (c.24).

Stat. Def., means “all property wherever situated and includes—(a) money, (b) all forms of property, real or personal, heritable or moveable, (c) things in action and other intangible or incorporeal property” (s.316(1) of the Proceeds of Crime Act 2002 (c.29)).

“Deal with any property”: see DEAL WITH.

“Inspection . . . of property”: see INSPECTION.

See also DAMAGES; DOCUMENT.

“Value of the property”: see VALUE.

“After-acquired property”: see ACQUIRE; ENTITLED; FUTURE; RIGHT IN EQUITY.

“Property in the goods”, mentioned in a bill of lading: see PASS.

“Property at interest”: see MONEY OUT AT INTEREST.

“Money or other property”: see MONEY.

“Money or property of a company”: see MONEY.

“My property at R.’s bank”: see MY.

“Property” which a wife may acquire after judicial separation: see ACQUIRE.

“Property and benefit” in a copyright: see BENEFIT.

“House and property”: see HOUSE.

“Property or profits”: see PROFITS.

“Vessel or property”: see VESSEL.

“Property held in trust”: see IN TRUST.

“Property not reduced into money”: see REDUCED INTO MONEY.

“Property passing”: see PASSING.

“Property purchased”: see PURCHASED.

“Property recovered”: see RECOVERED OR PRESERVED.

Stat. Def., Deeds of Arrangement Act 1887 (c.57) s.19; Sale of Goods Act 1894 (c.71); Administration of Estates Act 1925 (c.23) s.55; Law of Property Act 1925 (c.20) s.205; Settled Land Act 1925 (c.18) s.117; Trustee Act 1925 (c.19) s.68; Companies Act 1948 (c.38) s.208; Matrimonial Causes Act 1965 (c.72) s.26(6); Theft Act 1968 (c.60) s.4; Administration of Justice Act 1970 (c.31) s.32(4); Criminal Damage Act 1971 (c.48) s.10; Friendly Societies Act 1974 (c.46) s.111; Insurance Companies Act 1974 (c.49) s.43(5); Sale of Goods Act 1979 (c.54) s.61; Highways Act 1980 (c.66) s.265(11); Supply of Goods and Services Act 1982 (c.29) s.18; Forfeiture Act 1982 (c.34) s.2; Insurance Companies Act 1982 (c.50) s.50; Mental Heath Act 1983 (c.20) s.112; Country Courts Act 1984 (c.28) ss.54(5), 9(4); Capital Transfer Tax Act 1984 (c.51) s.272; Insolvency Act 1986 (c.45) s.436; Criminal Justice Act 1988 (c.33) s.102; Law of Property (Miscellaneous Provisions) Act 1994 (c.36) s.1(4).

In s.14(4) of the State Immunity Act 1978 the expression “property” includes all real and personal property including legal, equitable or contractual rights and interests in assets that may be held by a state, an emanation of the state, a central bank or another public monetary authority, irrespective of the capacity in which the property is held (*AIG Capital Partners v Republic of Kazakhstan* [2005] EWHC 2239 (Comm)).

Pensions in payment were better characterised as financial resources than as property for the purposes of the Matrimonial Causes Act 1973 because they are not realisable or transferable (*Martin-Dye v Martin-Dye* [2006] EWCA Civ 681).

A vehicle registration mark is property only in a very restricted sense (*Goel v Pick* [2006] EWHC 833 (Ch)).

An interest in an unadministered estate is property for the purposes of the Proceeds of Crime (Northern Ireland) Order 1996 (*Re Maye* [2008] UKHL 9).

Stat. Def., “includes property wherever situated and whether real or personal, and things in action and other intangible or incorporeal property” (Justice and Security (Northern Ireland) Act 2007 s.42).

A share in the equity of redemption in a property is a possession for the purposes of art.1 of the First Protocol to the European Convention on Human Rights (*Horsham Properties Group Ltd v Clark* [2008] EWHC 2327 (Ch)).

For the purposes of s.436 of the Insolvency Act 1986, “property” includes a composite right of a residuary legatee to compel due administration of the estate and to have the residue paid to him when the administration was complete (*Re Hemming (Deceased)* [2008] EWHC 2731 (Ch)).

Sperm can be a man’s property for the purposes of action in negligence (*Yearworth v North Bristol NHS Trust* [2009] EWCA Civ 37).

“Applying the test enunciated by Lord Wilberforce in *NPB v Ainsworth*, in my judgment, an EUA [European Union Allowance] is ‘property’ at common law. It is definable, as being the sum total of rights and entitlements conferred on the holder pursuant to the ETS. It is identifiable by third parties; it has a unique reference number. It is capable of assumption by third parties, as under the ETS, an EUA is transferable. It has permanence and stability, since it continues to exist in a registry account until it is transferred out either for submission or sale and is capable of subsisting from year to year. . . . Thus in my judgment, applying the three fold test identified by Morritt L.J. in *In re Celtic Extraction* leads to the conclusion that an EUA is certainly ‘property’ and intangible property under the statutory definition there in place. First, there is, here, a statutory framework which confers an entitlement on the holder of an EUA to exemption from a fine. Secondly, the EUA is an exemption which is transferable, and expressly so, under the statutory framework. Thirdly the EUA is an exemption which has value: see paragraph 49 above. Whilst the cited case law concerned the meaning of ‘property’ as specifically defined in various statutes, in my judgment, the reasoning of Morritt L.J. applies equally to the characteristics of property at common law. Indeed, Morritt L.J. himself relied upon *National Provincial Bank v Ainsworth*. Moreover the terms used in statutory definitions are themselves derived from common law concepts—for example in *In re Celtic*, the s.436 statutory definition refers to ‘things in action’ and ‘every description of property’; the meaning of these terms, in turn, must be derived from the common law notion of ‘property’. Further, applying the reasoning of Jacob J. in *Swift v Dairywise*, an EUA is also capable of forming the subject matter of a trust and thus something in which equitable ownership can be held. There is a close analogy between the exemption conferred by milk quota and the exemption conferred by an EUA. Accordingly an EUA constitutes ‘property’ and it is ‘intangible property’. The final issue here is whether an EUA is to be regarded as a ‘chose in action’ or, instead, some form of other intangible property. Armstrong suggests it may be a ‘chose in action’; Winnington contends strongly that it cannot be a chose in action. On the one hand, in *Nai-Keung*, the Privy Council

PROPERTY

concluded that the quota there was not a chose in action, but rather fell within the term 'other intangible property' as that term appeared in the statutory definition in that case. On the other hand, in *In re Celtic Extraction*, the statutory definition in question did not have such an additional category of property, but was confined to 'things in action' and 'every description of property'. Morritt L.J. did not specify into which of these two categories the waste management licence fell. In my judgment, strictly an EUA is not a chose in action in the narrow sense, as it cannot be claimed or enforced by action. However to the extent that the concept encompasses wider matters of property, then it could be so described. For reasons set out below, ultimately I do not consider that it matters whether an EUA is a chose in action or merely some form of 'other intangible property'." (*Armstrong DLW GmbH v Winnington Networks Ltd* [2012] EWHC 10 (Ch).)

"47. Everybody knows that 'property' differentiates between things that are mine and things that are not mine. The law lays down criteria for determining the boundary between, on the one hand, those rights that are only enforceable against particular persons and, on the other hand, those rights attaching to things that are capable of being vindicated against the whole world. The claim to property in intangible information presents obvious definitional difficulties, having regard to the criteria of certainty, exclusivity, control and assignability that normally characterise property rights and distinguish them from personal rights." (*Fairstar Heavy Transport NV v Adkins* [2013] EWCA Civ 886.)

See ONEROUS PROPERTY.

See ACTUALLY PRODUCING INCOME; BENEFIT; CIVIL RIGHTS; DERIVED PROPERTY; EFFECTS; EXPECTANCY; FREEHOLD; HOUSEHOLD; INTEREST (IN PROPERTY); MANAGING PROPERTY; MOVABLE; OWN PROPERTY; PRIVATE PROPERTY; PROPERTY AND EFFECTS; PROPERTY OTHER THAN LAND; SEPARATE PROPERTY; SPECIAL; THE.

PROPERTY. "The issue of the nature of 'property' which could properly constitute a target for the engagement of s.37 MCA 1973 was considered by the Court of Appeal in *Crittenden v Crittenden* [1990] 2 FLR 361. In that case, H and W were shareholders in a company which carried on business providing mooring facilities at a boat station. By the time divorce proceedings had been initiated, the company was insolvent. The local authority was also challenging the company's right to carry on business on common land to which it had no title or licence to occupy. In the course of that litigation, the local authority made an offer to buy the mooring business and, for these purposes, it required the husband to sign a letter of intent. A first instance judge, exercising his jurisdiction in the family proceedings, made an order requiring the husband to sign such a letter both in his personal capacity and in his capacity as a director of the company. In the event of his refusal to do so, further orders were made which authorised a family judge to sign on his behalf pursuant to its powers under s.39 of the Supreme Court Act 1981. The husband objected to signing the letter of intent because it contained various restrictive covenants which would have the effect of preventing him from operating a similar business within a fixed radius of the boat station which was being acquired from the company by the local authority. In support of the court's jurisdiction to impose such a restriction on the husband, the wife's counsel relied upon ss. 24A and 37 of the MCA 1973." (*C v C* [2015] EWHC 2795 (Fam).)

PROPERTY AND EFFECTS. The "property and effects" of a business have been held not to include its GOODWILL (*Chapman v Hayman*, 1 T.L.R. 397; but see *Potter v*

Inland Revenue Commissioners, 10 Ex. 147, and *Re Leas Hotel Co* [1902] 1 Ch. 332; ASSETS). See EFFECTS; PROPERTY OTHER THAN LAND; STOCK IN TRADE.

PROPERTY BUSINESS. Stat. Def., Corporation Tax Act 2009 s.204.

PROPERTY DEVELOPMENT. Stat. Def., para.23(2) of Sch.14 to the Finance Act 2000 (c.17).

Stat. Def., Income Tax Act 2007 s.196(2).

PROPERTY MANAGEMENT WORK. Stat. Def., Housing (Wales) Act 2014 s.12. See also LETTINGS WORK.

PROPERTY OTHER THAN LAND. Goodwill, ordinarily, is “property except”—i.e. other than—“lands”, a contract for the sale of which is liable to ad valorem stamp duty as on a conveyance (Stamp Act 1891 (c.39) s.59(1)); and even the goodwill of a public-house is not necessarily a mere enhancement of the value of the tenement, and may on the facts be “property except lands”, etc. within the section (*West London Syndicate v Inland Revenue Commissioners* [1898] 2 Q.B. 507); but if the goodwill be inherent in, or annexed to (and not treated as separate from), the land, then it is (like an EASEMENT) part of the land, and ad valorem duty on a contract for its sale is not payable under the section (*Muller v Inland Revenue Commissioners* [1900] 1 Q.B. 310; affirmed [1901] A.C. 217). See further LOCALLY SITUATE; PROPERTY AND EFFECTS.

PROPERTY RENTAL BUSINESS. Stat. Def., Finance Act 2006 s.104.

PROPHECY. “Prophecies’ are, by our statutes, reputed for wizardly foretelling of things to come in dark and ambiguous speeches, whereby great commotions have been often caused in this kingdom, and great attempts made by those to whom those speeches promised good successe” (Cowel; see further Jacob) Cp. CONJURATION.

PROPORTION. Damages “proportioned to the injury resulting” from death (Fatal Accidents Act 1846 (c.93) s.2) did not include funeral expenses (*Dalton v South Eastern Railway*, 27 L.J.C.P. 227; *Osborn v Gillett*, L.R. 8 Ex 88; *Clark v London General Omnibus Co.* [1906] 2 K.B. 648; *Condon v Great Southern & Western Railway*, 16 I.C.L.R. 418; but see *Jackson v Watson*, 78 L.J.K.B. 587, cited FUNERAL EXPENSES); but where death resulted from injury to a workman and he left dependants “in part” dependent upon him, the “reasonable and proportionate” compensation to the latter, under Workmen’s Compensation Act 1897 (c.37) Sch.1 r.1(a)(ii), might have included funeral expenses, if they had come within the maximum compensation, for subs.(a)(iii) provided for these where there were no dependants, and why not where he left dependants? (*Bevan v Crawshay* [1902] 1 K.B. 25.) See further DAMAGES. As to the mode of assessing such “reasonable and proportionate” compensation, see *Osmond v Campbell* [1905] 2 K.B. 852; but see as to that latter case *Hall v Tamworth Colliery Co* [1911] A.C. 655, cited DEPENDENT; see also PARTIAL DEPENDENCY.

“The proportion in which the said authorities shall be represented shall be determined by the scheme”: see *R. v Minister of Health* [1927] 2 K.B. 229.

“In joint and equal proportions”: see JOINT AND EQUAL.

PROPORTIONALITY. “The principle of proportionality, which is one of the general principles of Community law, requires the means employed by a Community provision to be appropriate for attaining the objective pursued and not to go beyond what is necessary to achieve it.” (*Re Tobacco Advertising Directive 2003/33: Germany v Council of the European Union* (Case C-380/03) ECJ at [144].)

“The Court has consistently held that the principle of proportionality is one of the general principles of Community law. By virtue of that principle, the lawfulness of the

PROPORTIONALITY

prohibition of an economic activity is subject to the condition that the prohibitory measures are appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.” (*R. v Ministry of Agriculture, Fisheries and Food and Secretary of State for Health, Ex p. Fedesa* (Case C-331/88) ECJ [1990] ECR I-4023, para.13.

“166. It is in my view a mistake to approach proportionality as a test under the Human Rights Act which is insensitive to considerations of institutional competence and legitimacy. The qualifying objectives reflected in art.8.2 of the Convention can engage responsibilities normally attaching in the first instance to other branches of the state, whether the executive or the legislature. When considering whether a particular measure is necessary and all the more when considering whether it is justified on a balancing of competing and often incommensurate interests, courts should recognise that there can still be wisdom and relevance in the factors mentioned in the preceding two paragraphs. This is all the more so when the court is considering the scope of the Convention rights, as enacted domestically, in a situation, like the present, which the European Court of Human Rights has held to fall within the United Kingdom’s international margin of appreciation. That Parliament has regularly addressed the general area and is still actively engaged in considering associated issues in the context of Lord Falconer’s Assisted Dying Bill 2013 underlines the significance of the point. This does not mean that there is a legal rule that courts will not intervene (as to which see Lord Steyn, extra-judicially in *Deference: A Tangled Story*, [2005] PL 345, commenting on *R. (ProLife Alliance) v British Broadcasting Corp* [2003] UKHL 23, [2004] 1 AC 185, paras 74–77 per Lord Hoffmann) or that the courts have no role. It means merely that some judgments on issues such as the comparative acceptability of differing disadvantages, risks and benefits have to be and are made by those other branches of the state in the performance of their everyday roles, and that courts cannot and should not act, and do not have the competence to act, as a primary decision-maker in every situation. Proportionality should in this respect be seen as a flexible doctrine.” (*Nicklinson R. (on the application of) (Rev 1)* [2014] UKSC 38.)

“29. The concept of proportionality lies at the heart of this case. It is important not to confuse two different meanings of proportionality which are in play here. Lord Hoffmann made the same point at para.23 of his speech in *Campbell v MGN Ltd (No 2)*. 30. The first meaning of proportionality is that with which we are familiar in the context of the Convention. A valuable recent statement of what proportionality in this sense entails is to be found in *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39, [2014] AC 700. Lord Reed said at para.71: ‘An assessment of proportionality inevitably involves a value judgment at the stage at which a balance has to be struck between the importance of the objective pursued and the value of the right intruded upon. The principle does not however entitle the courts simply to substitute their own assessment for that of the decision-maker. As I have noted, the intensity of review under EU law and the Convention varies according to the nature of the right at stake and the context in which the interference occurs. Those are not however the only relevant factors. One important factor in relation to the Convention is that the Strasbourg court recognises that it may be less well placed than a national court to decide whether an appropriate balance has been struck in the particular national context. For that reason, in the Convention case law the principle of proportionality is

indissolubly linked to the concept of the margin of appreciation. That concept does not apply in the same way at the national level, where the degree of restraint practised by courts in applying the principle of proportionality, and the extent to which they will respect the judgment of the primary decision maker, will depend upon the context, and will in part reflect national traditions and institutional culture. For these reasons, the approach adopted to proportionality at the national level cannot simply mirror that of the Strasbourg court.’ ... 33. The second meaning of proportionality finds expression in the CPR and is relevant to the assessment of costs. Thus where the amount of costs is to be assessed on the standard basis, the court will only allow costs ‘which are proportionate to the matters in issue’ (rule 44.4(2)(a)). An aspect of this is that the court must have regard to the various matters set out in rule 44.5(3) which we have set out at para.21 above. In *Home Office v Lownds* [2002] 1 WLR 2450, the Court of Appeal gave important guidance as to the application of proportionality in an assessment of costs on the standard basis. The court adopted the following statement at para.23: ‘In modern litigation, with the emphasis on proportionality, there is a requirement for parties to make an assessment at the outset of the likely value of the claim and its importance and complexity, and then to plan in advance the necessary work, the appropriate level of person to carry out the work, the overall time which would be necessary and appropriate spend on the various stages in bringing the action to trial and the likely overall cost. While it was not unusual for costs to exceed the amount in issue, it was, in the context of modest litigation such as the present case, one reason for seeking to curb the amount of work done, and the cost by reference to the need for proportionality.’” (*Coventry v Lawrence* [2015] UKSC 50.)

“Over and above the scope of *Wednesbury* unreasonableness, proportionality is not a common law principle (*R v Home Secretary ex parte Brind* [1991] 1 AC 696). It is a concept derived from Europe, and proportionality comes into play only where triggered by, for example, European law rights (including human rights) being in issue.” (*Prescott, R (On the Application Of) v General Council of the Bar* [2015] EWHC 1919 (Admin).)

PROPORTIONATE. “In *de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing* [1999] 1 AC 69, 80, the Privy Council, drawing on South African, Canadian and Zimbabwean authority, defined the questions generally to be asked in deciding whether a measure is proportionate:

‘whether: (i) the legislative objective is sufficiently important to justify limiting a fundamental right; (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective.’

“This formulation has been widely cited and applied. But counsel for the applicants (with the support of Liberty, in a valuable written intervention) suggested that the formulation was deficient in omitting reference to an overriding requirement which featured in the judgment of Dickson CJ in *R v Oakes* [1986] 1 SCR 103, from which this approach to proportionality derives. This feature is (p.139) the need to balance the interests of society with those of individuals and groups. This is indeed an aspect which should never be overlooked or discounted. The House recognised as much in *R (Razgar) v Secretary of State for the Home Department* [2004] UKHL 27, [2004] 2 AC 368, paras 17–20, 26, 27, 60, 77, when, having suggested a series of questions which an adjudicator would have to ask and answer in deciding a Convention question, it said that the judgment on proportionality—

PROPOSAL

‘must always involve the striking of a fair balance between the rights of the individual and the interests of the community which is inherent in the whole of the Convention. The severity and consequences of the interference will call for careful assessment at this stage’ (see para.20).

“If, as counsel suggest, insufficient attention has been paid to this requirement, the failure should be made good.” (*Huang (FC) (Respondent) v Secretary of State for the Home Department (Appellant)* [2007] UKHL 11 per Lord Bingham of Cornhill at [19].)

“Proportionality requires that the measure is both ‘appropriate’ (‘suitable’) to secure the objective and ‘necessary’ as a means of doing so. A measure is suitable only if it genuinely reflects a concern to attain the objective in a consistent and systematic manner (*Commission v Austria*, no. C–28/09, 21 December 2011, paras 125–126). The court accepts that a measure cannot be necessary if there is an alternative which has a less restrictive effect on intra-European Union trade. In both respects, the court does not agree that the test for a successful challenge to a measure which infringes article 34 is that it requires to be ‘manifestly inappropriate’ to attain the objective. The court does not therefore accept that the level of judicial scrutiny can be described as ‘low’. The ECJ is clear in its requirement that the member state demonstrate that the measure is proportionate; that is to say appropriate and necessary in the manner already described. The court accepts the petitioners’ submission that ‘manifestly inappropriate’ is language used by the ECJ in relation to testing European Union institution measures (or national measures implementing EU law) (see e.g. *R v Secretary of State for Health ex parte British American Tobacco (Investments)* [2002] ECR I–11453, para.123). There the balance is between private and public interests. It is not applicable when testing the legitimacy of state measures against fundamental principles contained in the EU Treaties where the balance is between EU and state interests (see generally Tridimas, *General Principles of EU Law*, (2nd edn), pp. 137–138).” (*Collis v The Lord Advocate* [2012] ScotCS CSIH 80.)

PROPOSAL. “A proposal to acquire” within the meaning of s.8 of the Caravan Sites Act 1968 (c.52) could exist without there being a formal resolution or an unequivocal intention to acquire land by a county council for a caravan site (*R. v Secretary of State for the Environment, Ex p. North Hertfordshire DC* [1989] 21 H.L.R. 588).

“The word ‘proposal’ is defined in the *Oxford English Dictionary* as ‘a putting forward of something for acceptance’; the verb ‘propose’ is defined as ‘to put forward for acceptance’.

[49] Thus in our opinion, the language chosen by Parliament is significant. If not called in, a ‘proposal’ is converted to a workable decision (i.e. a decision that can be proceeded with) by the passage of six weeks and the specific statutory provision: section 15(6) and (7). But if the proposal is called in, all action on the part of the Council must be suspended (despite their earlier decision to implement the proposal in terms of section 15(1) and (3)). The proposal can only become a workable decision (i.e. a decision that can be proceeded with) as and when the Ministers choose to make it so: section 16(2)–(4). Thus in our opinion the Ministers are not, in terms of the statute, mere checkers of procedural aspects leading to a decision; rather they are part of the decision-making process itself.” (*Comhairle Nan Eilean Siar (Constituted As The Western Islands Council) v The Scottish Ministers* [2013] ScotCS CSIH 6.)

See REQUEST.

PROPOSE. “Proposed road”: see *Re London School Board and Foster*, 87 L.T. 700. Cp. “Intended road”, under INTENDED.

“Proposed to be made” (Matrimonial Causes Rules 1957 (SI 1957/619) r.4(1)(o), added by Matrimonial Causes (Amendment No.2) Rules 1963 (No.1990)) covers agreements and arrangements which will be entered into only if the court approves (*Allford v Allford* [1965] P. 117).

The words “proposes to demolish and reconstruct” (Landlord and Tenant Act 1954 (c.56) s.12(1)(a)) impose on a landlord a lesser burden of proof than the words “intends to demolish”, etc. (*Trustees of the Magdalen Charity, Hastings v Shelower*, 19 P. & C.R. 389).

See CONTEMPLATE.

PROPOSES. (Landlord and Tenant Act 1987 (c.31) s.5.) The expression “proposes” in s.5 denoted a state of mind between mere consideration of a possible course of action and a fixed and irrevocable determination to pursue that course of action, so that the conclusion of a contract with a third party to sell premises amounted to a “proposal” (*Mainwaring v Trustees of Henry Smith’s Charity* [1996] 2 All E.R. 220).

PROPOSITUS. The person put forward; when there is a class ascertained by their relationship to a certain person, e.g. the issue, next of kin, or descendants of X such person will be the propositus. See also PER.

PROPRIETARY. “A proprietary chapel is perfectly anomalous; it is a thing unknown to the constitution of our Church and in our ecclesiastical establishment. It can possess no parochial rights; and the exercise of any such rights would be a mere usurpation in the view of the law” (per Nicholl D.A., *Moysey v Hillcoat*, 2 Hagg. Ecc. 46). See further EASE; FREE CHAPEL, PRIVATE CHAPEL; PRIVATE HOUSE.

“Proprietary designation” (Pharmacy and Medicines Act 1941 (c.42) s.12(5)); the designation had to contain words indicating that they were the goods of a particular person by virtue of manufacture, selection, certification, dealing with or offering for sale (*Potter & Clarke Ltd v Pharmaceutical Society of Great Britain* [1946] 2 All E.R. 561).

Proprietary, as distinguished from a preferential, right: see *Ellis v Bedford* [1899] 1 Ch. 494, cited “same interest”, under SAME.

The holder of “proprietary stock is a member of the company, and has the right of participating in the dividends or net profits of the company”, whilst the holder of debenture stock is a creditor of the company (per Chitty J., *Re Bodman* [1891] 3 Ch. 135, cited SHARE).

“Any proprietary right or interest” (Theft Act 1968 (c.60) s.5(1)). Record-making companies which distributed promotional copies to journalists and others, and which they did not expect to be returned, had retained no proprietary rights or interests within the meaning of this section, notwithstanding that the records were marked with words indicating that they belonged to the company concerned and were not for sale (*R. v Cording* [1983] Crim. L.R. 175).

“Proprietary right or interest” (Theft Act 1968 (c.60) s.5(1)). An employee, in breach of a contract made with his employer to sell on the employer’s premises only goods supplied by the employer, made a personal profit by selling goods obtained elsewhere. It was held that these circumstances did not have the effect of giving the employer a “proprietary right or interest” in that profit within the meaning of this section (*Att-Gen’s Reference (No.1 of 1985)* [1986] A.C. 909).

“Proprietary club”: see CLUB.

PROPRIETARY ESTOPPEL. “I add a brief comment as to proprietary estoppel. In paragraphs 70 and 71 of his judgment in *Oxley v Hiscock* Chadwick LJ considered the conceptual basis of the developing law in this area, and briefly discussed proprietary estoppel, a suggestion first put forward by Sir Nicolas Browne-Wilkinson V-C in *Grant v Edwards* [1986] Ch 638, 656. I have myself given some encouragement to this approach (*Yaxley v Gotts* [2000] Ch 162, 177) but I have to say that I am now rather less enthusiastic about the notion that proprietary estoppel and ‘common interest’ constructive trusts can or should be completely assimilated. Proprietary estoppel typically consists of asserting an equitable claim against the conscience of the ‘true’ owner. The claim is a ‘mere equity’. It is to be satisfied by the minimum award necessary to do justice (*Crabb v Arun District Council* [1976] Ch 179, 198), which may sometimes lead to no more than a monetary award. A ‘common intention’ constructive trust, by contrast, is identifying the true beneficial owner or owners, and the size of their beneficial interests.” (*Stack v Dowden* [2007] 2 A.C. 432 per Lord Walker.)

PROPRIETARY TRADING. Stat. Def., Financial Services (Banking Reform) Act 2013 s.11.

PROPRIETOR. For the purposes of legislation the “proprietor” of a business need not be the owner of the business nor need he necessarily be involved in its daily management (*Greene King Plc v Harlow DC* [2004] 2 All E.R. 102, Q.B.D.).

Stat. Def., “in relation to a school or other institution, means the person or body of persons responsible for its management” (Education and Skills Act 2008).

PROSECUTION. “The prosecution” (Prosecution of Offences Act 1985 (c.23) s.22(3)(b)), for the purposes of this section, includes both the investigating police and the Crown Prosecution Service (*R. v Birmingham Crown Court, Ex p. Ricketts* [1990] Crim.L.R. 745).

“Prosecution for an offence” within the meaning of s.5(4) of the Dangerous Dogs Act 1991 (c.65) can include a prosecution which had been commenced but discontinued (*R. v Walton Street Justices, Ex p. Crothers, The Times*, June 30, 1992).

PROSECUTOR. Where a private citizen signs a charge at the invitation of the police who subsequently instruct counsel and solicitor in the prosecution, the private citizen is the “prosecutor” for the purpose of the tort of malicious prosecution (*Malz v Rosen* [1966] 1 W.L.R. 1008).

For the purposes of s.1 of the Trade Descriptions Act 1968, the “prosecutor” is the local authority and not the person laying the information (*R. (Donnachie) v Cardiff Magistrates’ Court* [2007] EWHC 1846 (Admin)).

“I would answer these questions by saying that the phrase ‘the prosecutor’ in s.31 of the [Animal Welfare Act 2006] is not limited to prosecutors who prosecute pursuant to a power conferred by some statutory provision but applies to anyone who initiates a prosecution under the Act.” (*Lamont-Perkins v Royal Society for the Prevention of Cruelty to Animals* (RSPCA) [2012] EWHC 1002 (Admin).)

PROSPECTIVE. A prospective beneficiary is, normally, a beneficiary who may take, but who has not yet taken, a vested interest (*Pattinson’s Trustees v Motion* [1941] S.C. 290).

“Prospective purchaser”: see PURCHASER; PROSPECTIVE PURCHASER.

PROSPECTIVE PARENT. Stat. Def., Childcare Act 2006 s.2(2).

PROSPECTIVE PURCHASER. A prospective purchaser for the purpose of the Price Marking Order 1991 (No.1382) was someone who contemplated making a purchase (*Drewery v Ware-Lane* [1960] 3 All E.R. 529 applied; *Allen v Redbridge LBC* [1994] 1 All E.R. 728).

PROSPECTUS. It was held in *Government Stock and other Securities Investment Co v Christopher* [1956] 1 W.L.R. 237 that there was no ground for giving to the word “prospectus” in Companies Act 1948 (c.38) ss.37, 38 any more extended meaning than that given in s.455, and that a circular approved by a company setting out the terms of a scheme for the requisition of its shares by a new company and issued by the new company was not a prospectus as that word was used in the Companies Act 1948. See now Companies Act 1985 (c.6) ss.63, 66. See also *Sleigh v Glasgow and Transvaal Options*, 41 S.L.R. 218.

“Omission in prospectus”: see *Roussell v Burnham* [1909] 1 Ch. 127; *Re Wimbledon Olympia* [1910] 1 Ch. 630; *Re South of England Natural Gas Co* [1911] 1 Ch. 573; *Adams v Thrift* [1915] 2 Ch. 21.

Negligence as regards a prospectus: see *Re Brazilian Rubber Plantations Co* [1911] 1 Ch. 573; see further *Lynde v Nash* [1929] A.C. 158.

Stat. Def., Prevention of Fraud (Investments) Act 1958 (c.45) s.26(1); Companies Act 1985 (c.6) s.744.

See PROVISIONAL PROSPECTUS.

PROSTITUTE. (Criminal Law Amendment Act 1885 (c.69); Sexual Offences Act 1956 (c.69) ss.22(1)(a)(c), 30(1).) The words “prostitute” and “prostitution” are not confined to cases of ordinary sexual intercourse (*R. v de Munck* [1918] 1 K.B. 635) or even to cases where the woman is a passive party to the lewdness (*R. v Webb* [1964] 1 Q.B. 357).

The term “common prostitute” in s.1(1) of the Street Offences Act 1959 (c.57) applies exclusively to female prostitutes—(*DPP v Bull* [1994] 3 W.L.R. 1196).

Stat. Def., Sexual Offences Act 2003 (c.42) s.51.

“Live . . . on the earnings of prostitution”: see LIVE.

PROSTITUTION. “Live wholly or in part on the earnings of prostitution” (Sexual Offences Act 1956 (c.69) s.30(1)). A woman who offered sexual services and took the money but failed to provide the services was nevertheless engaged in “prostitution” within the meaning of this section (*R. v McFarlane* [1994] Q.B. 419). See also EARNINGS.

PROTECT. The power given by s.26 of the Local Government Act 1894 (c.73) to the district council, or, failing it, the county council, to “protect” public rights of way, was not confined to taking or defending proceedings in the council’s name; the council might contribute to the costs of others in protecting such rights (*R. v Norfolk CC* [1901] 2 K.B. 268).

“Suitable goggles . . . to protect the eyes” (Factories Act 1937 (c.67) s.49, now Factories Act 1961 (c.34) s.65). While the obligation to provide suitable goggles is absolute, there is no absolute obligation that the goggles so provided shall ensure protection (*Daniels v Ford Motor Co* [1955] 1 W.L.R. 76).

The use of the word “protect” in an indemnity clause, e.g. where a seller of goods agrees to “protect” the buyer against “all claims”, limits the liability of the seller so as to exclude unmeritorious claims (*Helfand v Royal Canadian Art Pottery*, 11 D.L.R. (3d) 404).

PROTECTED CHARACTERISTICS. Stat. Def., Equality Act 2010 s.4.

PROTECTED

PROTECTED PERSON. Stat. Def., Internationally Protected Persons Act 1978 (c.17) s.1.

PROTECTED SITE. A “protected site” for the purposes of s.1(2) of the Mobile Homes Act 1983 (c.34) means one where planning permission has been granted for one or more mobile homes to be set up upon it (*Balthasar v Mullane* (1986) 84 L.G.R. 55). Sites provided for gipsies by local authorities under ss.6, 16 of the Caravan Sites Act 1968 (c.52) are outside the definition of “protected site” in s.5(1) of the 1983 Act (*Greenwich LBC v Powell* [1989] 2 W.L.R. 7). A site long used for caravans but in respect of which the relevant planning permission had lapsed was not a “protected site” (*Adams v Brown* [1989] L.S.Gaz., December, 39). A site owned and occupied by a county council as a caravan site providing accommodation for gypsies pursuant to a duty under s.6 of the Caravan Sites Act 1968 is not a “protected site” within the meaning of s.1(2) (*Stoke on Trent City Council v Frost & Frost* (1991) 24 H.L.R. 290).

PROTECTED STREET. Stat. Def., Pipelines Act 1962 (c.58) s.15(10).

PROTECTED TENANCY. (Rent Act 1977 (c.42) s.1.) A lease of premises, which included living accommodation, to which Pt II of the Landlord and Tenant Act 1954 (c.56) applied, could not be turned into a “protected tenancy” under the 1977 Act by unilateral action on the part of the lessee (*Wagle v Trustees of Henry Smith's Charity Kensington Estate* [1989] 2 W.L.R. 669).

PROTECTION. Proceedings for “protection”, or “recovery”, of SETTLED land (Settled Land Act 1882 (c.38) s.36): see *Re De la Warr*, 16 Ch. D. 587; *Re Twyford Abbey*, 45 L.T. 745; *Re Ormrod* [1892] 2 Ch. 318. See now Settled Land Act 1925 (c.18) s.92.

As regards the Prison Act 1898 (c.41) s.10, see *Pointing v Wilson* [1927] 1 K.B. 382.

“Special provision for the protection of any person or class of persons” (Gas Act 1948 (c.67) s.56(2)): see *Hinckley Urban DC v West Midlands Gas Board* [1951] Ch. 577.

“Protection and security” of a wife’s separate property: see SEPARATE PROPERTY.

“Protection of property”: see LAWFUL EXCUSE.

PROTECTION OF THE PUBLIC. See NECESSARY FOR THE PROTECTION OF THE PUBLIC.

PROTECTIVE TRUSTS. See *Re Boulton's Settlement Trusts*, 97 L.J. Ch. 243, as to the appointment of trusts upon “protective trusts”.

(Trustee Act 1925 (c.19) s.33.) An interest settled on protective trusts, i.e. until some event should happen whereby the beneficiary would be deprived of the right to receive the same, was held to determine on the coming into operation of an order declaring to be enemy territory the place where the beneficiary resided (*Re Gourju* [1943] Ch. 24; contrast *Re Halt* [1944] Ch. 46).

So also where the beneficiary become an alien enemy so that the income would become payable to the Custodian of Enemy Property (*Re Wittke* [1944] Ch. 166).

A direction that certain income should “be held upon protective trusts for the benefit of A” (without specifying any period) was held to refer to the protective trusts declared by s.33 of the Trustee Act 1925, and to incorporate that section (*Re Wittke* [1944] Ch. 166).

See also PAYABLE TO SOME OTHER PERSON; SUFFER.

PROTECTOR OF THE SETTLEMENT. “The protector of the settlement” without the consent of whom (where there was one) the remainder and reversion after

an entail could not be barred (Fines and Recoveries Act 1833 (c.99) ss.34, 35) was established by that Act, and was, ordinarily, the first tenant for life (s.22); but see further ss.23–33. His power was absolute: “by s.36, a protector is made irresponsible, and is at liberty to act from mere caprice, ill-will, or any bad motive. By s.37, he is enabled to take a bribe for giving consent” (per Shadwell V.C., *Bankes v Le Despencer*, 12 L.J.Ch. 297).

See hereon Wms. & Eastwood, R.P. (25th edn), 149; 10 Encyc. 518–522; BASE; see further *Re Hughes* [1906] 2 Ch. 642. See further *Cohen v Bayley-Worthington* [1908] A.C. 97; Law of Property Act 1925 (c.20) s.207.

See also *Re Darnley's Will Trust* [1970] 1 W.L.R. 405.

PROTEST. “When a foreign bill is refused acceptance or payment, it was, and still is, necessary by the custom of merchants, in order to charge the drawer, that the dishonour should be attested by a protest” (Byles), and it is usually done by a notary public: see hereon Bills of Exchange Act 1882 (c.61) ss.51, 65, 68; *Re English Bank of the River Plate* [1893] 2 Ch. 438. See SUPRA PROTEST.

A protest by a master of a vessel on her arrival means “that any damage which has been sustained was the result of stormy weather. That is the ordinary meaning of a protest, and unless something else is expressed, that is always what a protest is understood to mean” (per Inglis L.P., *Adam v Morris*, 28 S.L.R. 153).

See UNDER PROTEST.

PROTESTANT. “Protestants” (Places of Religious Worship Act 1812 (c.155) s.2) extends to a congregation of foreign Lutherans (*R. v Hube*, Pea. 132). See CONVENTICLE.

A bequest to “Protestant Dissenters” may be explained by parol (*Drummond v Att-Gen, Ireland*, 2 H.L. Cas. 837). Cp. GODLY PREACHER.

“Protestant religion”: see EDUCATION; RELIGION.

PROVABLE. “Debt provable in bankruptcy”: see DEBT. See also LIABILITY; *Re McGreavy* [1950] Ch. 269 (unpaid rates a provable debt).

“Unsecured debts provable against the debtor’s estate”: see *Re E.A.B.* [1902] 1 K.B. 457, cited DEBT.

PROVE. “To prove” a thing is to test it, or (when spoken of a legal conclusion) to establish it by litigation; therefore, to say of a man’s patent that it “has been proved to be an infringement” of another patent, is actionable, if there has been no litigation under which such infringement has been established (*Crompton v Swete* 32 S.J. 274).

But where a charterparty stipulated that the owner should receive “the highest freight which he could prove” to have been paid for a similar voyage; held, that this did not contemplate strictly legal proof, but meant such proof as ought reasonably to satisfy (*Gether v Capper*, 23 L.J.C.P. 69). In that case, Maule J., asked, “Is not a thing proved to one who knows the fact?” See PROOF.

“Admitted or proved” (Bills of Exchange Act 1882 (c.61) s.30(2)), “means no more than that some evidence of circumstances in the nature of the fraud must be given sufficient to be left to the jury” (per Denman J., *Tatam v Hasler*, 23 Q.B.D. 345).

“Proved to be rich”, in a prospectus of a mine company: see *Aaron's Reefs v Twiss* [1896] A.C. 282.

The word “proves” in s.1(5) of the Leasehold Property (Repairs) Act 1938 (c.34) does not connote proof by the landlord on the balance of probabilities, but merely the

PROVED

establishing of a prima facie or arguable case, without the need for evaluation of any rebutting evidence put forward by the tenant (*Associated British Ports v Bailey (C.H.)* [1989] 49 E.G. 53).

“Manifested and proved”: see MANIFESTED.

See ATTEST; EVIDENCE; OATH.

PROVED GUILTY. A person who makes an unequivocal plea of guilty which is accepted by the court is thereafter “proved guilty according to law” for the purposes of art.6(2) of the European Convention on Human Rights (*Revitt v Director of Public Prosecutions* [2006] EWHC 2266 (Admin)).

PROVIDE. A bequest to be applied in “providing a proper school” is good, as not necessarily involving the acquisition of land (*Johnston v Swann*, 3 Mad. 457; 1 Jarm. (4th edn), 228, 229). Cp. FOUND; ENDOW; ERECT.

The expression “provide a home” in a condition subsequent was held to be void for uncertainty (*Re Brace, Gurton v Clements* [1954] 1 W.L.R. 955).

An obligation on a charterer to “provide and pay for all the coal” does not exonerate the shipowner from the responsibility to see that the ship has a sufficiency of coal on board for the voyage so as to be seaworthy in that respect (*McIver v Tate Steamers* [1903] 1 K.B. 362).

A covenant to “make and provide” a way, e.g. a level crossing at a place to be selected, involves an obligation not to interfere with the passage over that way: see *Sharpe v Durrant*, 55 S.J. 423.

Railway company’s rates to be reduced when “the company do not provide trucks”—the words “provide trucks” (not the trucks) refer to the condition of being ready and willing, not to the actual fact. A steamship company “provides” and is paid for meals for its passengers, although circumstances may prevent all or some of them from eating them: see *Spillers & Bakers v Great Western Railway* [1911] 1 K.B. 386, cited FACILITIES.

“Provide materials”: see *Deuchar v Gas, Light & Coke Co* [1924] 2 Ch. 426, affirmed [1925] A.C. 691.

“It has been held, in marriage articles, that a trust to ‘provide suitably’ for the settlor’s younger children is not too vague to be executed, but the court will direct an inquiry what the provision should be” (Lewin (15th edn), 71, citing *Brenan v Brenan*, I.R. 2 Eq. 266).

No new burial ground “shall be provided and used” without the approval of the Home Secretary (Burial Act 1853 (c.134) s.6), did not merely mean that no land should be acquired (whether by gift or purchase) for a burial ground without such approval—it meant more than that, for “provided and used” in that connection meant the acquisition and equipment of land as, and so that it might at once be properly used as, a new burial ground (*Ward v Portsmouth* [1898] 2 Ch. 191).

“Provide for the determination of the settlement” (Income Tax Act 1952 (c.10) s.399(b), now Income and Corporation Taxes Act 1970 (c.10) s.439(1)(b)). A settlement which gives the trustees a special power to appoint the settled fund absolutely to a single person provides for its determination within the meaning of this section (*Jamieson v IRC* [1962] Ch. 748).

“Providing capital” (Companies Act 1948 (c.38) s.129(4), Sch.7 para.7(1), para.9) means providing new capital by a finance company and not the purchase of shares from other shareholders (*Qualter, Hall & Co Ltd v Board of Trade* [1962] 1 Ch. 273).

A means of communication “shall be provided” (Coal Mines Act 1911 (c.50) s.41) imposed a continuous obligation to maintain (*Close v National Coal Board* (O.H.) (1952) S.L.T. 33)

As to the circumstances in which means of ensuring safety are “provided” within Factories Act 1937 (c.67) s.26(2), now Factories Act 1961 (c.34) s.29, see *Ginty v Belmont Building Supplies* [1959] 1 All E.R. 414. Where an employee used a means of access to his place of work, other than the one provided by his employer, that access, unless permitted by the employer to be used as such, was not “provided” by the employer within the meaning of s.29 of the 1961 Act, and the provisions of that section as to safety did not therefore apply (*Smith v British Aerospace* [1982] I.C.R. 98).

“Goggles . . . shall be provided” (Factories Act 1937 (c.67) s.49, now Factories Act 1961 (c.34) s.65): there was a breach of the statutory duty to provide goggles when they were not in their usual place and the majority of workmen did not know of their whereabouts (*Finch v Telegraph Construction & Maintenance Co* [1949] 1 All E.R. 452). On the providing of a guard to machinery within s.119, see *Norris v Syndic Manufacturing Co* [1952] 2 Q.B. 135.

“Provided” (Building (Safety, Health and Welfare) Regulations 1948 (No.1145) reg.5). Where a foreman painter borrows some scaffolding from another contractor it has been “provided” by the employer within the meaning of this regulation (*Quinn v Green (Painters)* [1966] 1 Q.B. 509).

“Passenger road service provided by the Commission” (Transport Act 1947 (c.49) s.65(1)): see *Railway Executive v Henson*, 65 T.L.R. 336; *Ebbw Vale Urban DC v South Wales Traffic Area Licensing Authority* [1951] 2 K.B. 366.

“Provide” (Road Traffic Act 1972 (c.20) s.9(3)). A specimen of blood or urine is not provided within the meaning of this section unless and until the police officer requesting it is given the opportunity of taking charge of it, and does so. Where a specimen of urine was produced but was dropped before it could be handed over it was not “provided” for the purposes of this section (*Ross v Hodges* [1975] R.T.R. 55).

A police house is “provided” within the meaning of Police Regulations 1971 (SI 1971/156) reg.42(1) as soon as it is offered (*Hammond v Inman* (1977) 121 S.J. 201).

“Provided by the employer with work” (Employment Protection (Consolidation) Act 1978 (c.44) s.87). Where work was made available to an employee on a piecework basis the employee was held to have been “provided” with work within the meaning of this section, notwithstanding that he had failed to agree a rate of pay for the work with the employer (*Spinpress v Turner* [1986] I.C.R. 433).

“Services . . . provided in the course of any trade or business” (Trade Descriptions Act 1968 (c.29) s.14(1)(ii)). A false statement about services already provided was within this section of it was connected or associated with the supply of the services in question (*R. v Bevelectric* (1992) 142 New L.J. 1342).

(Income and Corporation Taxes Act 1988 (c.2) s.154.) A benefit was not “provided” until it became available to be enjoyed by the taxpayer, so that arrangements between an employer and a builder to build a loft conversion in which the taxpayer could work from home were not relevant in determining whether a benefit had been provided (*Templeton (Inspector of Taxes) v Jacob* [1996] 1 W.L.R. 1433).

“Providing for a child”: Stat. Def., Family Allowances Act 1965 (c.53) s.18(1).

PROVIDED ALWAYS. “If a man by indenture letteth lands for years, provided alwaies, and it is covenanted and agreed between the said parties, that the lessee

PROVIDED

should not alien, and it was adjudged that this was a condition by force of the proviso, and a covenant by force of the other words" (Co. Litt. 203B; see further Touch. 122; Elph. 411; *Doe d. Henniker v Watt* 8 B. & C. 308, cited IF). The rule was thus stated by Periam J., *Simpson v Titterell* (Cro. Eliz. 242): "'Proviso' alwaies implieth a condition if there be not words subsequent which may, peradventure, change it into a covenant, as where there is another penalty annexed to it for performance as *Dockwray's Case* (27 Hen. 8, 14) but it is a rule in provisoes, where the proviso is that the lessee shall perform or not perform a thing and no penalty to it, this is a condition, otherwise it is void; but if a penalty is annexed, *aliter est*". But in *Brookes v Drysdale* (3 C.P.D. 52), it was held that, in a lease, the words "provided always, and these presents are upon this express condition", of themselves, amounted to a covenant. See PROVIDO; IF.

But, generally, the words "provided always" refer to and qualify what has preceded (*Martelli v Holloway*, L.R. 5 H.L. 532). See further *Dicker v Angerstein*, 3 Ch. D. 600, cited PURPORTING.

The phrase "provided always" does not really introduce a proviso to what has gone before. It is really a shortened form of saying "provided always and it is hereby agreed", that is to say that it introduces a substantive provision (*Egham & Staines Electricity Co v Egham Urban DC*, 167 L.T. 299; on appeal, 170 L.T. 102).

PROVIDED FROM A PLACE IN THE UNITED KINGDOM. For the test determining whether a broadcast is provided from a place in the United Kingdom for the purposes of copyright laws, see *Murphy v Media Protection Services Ltd* [2007] EWHC 3091 (Admin).

PROVIDED THE FUNDS PERMIT. These words in the withdrawal clause of a building society do not deprive a member who has given notice of withdrawal of his right of priority over other members, in case of a liquidation after the notice has expired (*Walton v Edge*, 10 App. Cas. 33, distinguishing *The Mutual Society*, 24 Ch. D. 425 fn. and explaining *Blackburn Building Society v Cunliffe*, 22 Ch. D. 61). See AVAILABLE.

PROVIDED WITH ACCOMMODATION. A child ceased to be "provided with accommodation" within the meaning of s.105 of the Children Act 1989 (c.41) when he began to live with a relation or family to whom he was closely related (*Re H. (A Child) (Care Order: Appropriate Local Authority)* [2004] 2 W.L.R. 419, CA).

PROVIDENT. "Provident benefits" (Income Tax Act 1952 (c.10) s.440(2), see now Income and Corporation Taxes Act 1970 (c.10) s.338). Sums paid out of a union's general fund by way of legal assistance were held not to be "provident benefits" within the meaning of this section (*R. v Income Tax Special Commissioners, Ex p. National Union of Railwaymen* [1967] 1 W.L.R. 263).

See INDUSTRIAL AND PROVIDENT SOCIETY. Cp. FRIENDLY SOCIETY.

PROVISION. "Provision for payment of a stated amount free of income tax" (Finance Act 1941 (c.30) s.25). An assignment, out of an annual sum payable to the assignor, of such a sum as after deduction of income tax would amount to x, was held to be a "provision" for payment of the sum assigned (*Pyke v Peters* [1943] K.B. 242).

For the purposes of the Finance Act 1941 (c.30) s.25(1), provision was made under the Inheritance (Family Provision) Act 1938 (c.45) at the date of the death of the testator (*Re Pointer* [1946] Ch. 324).

"Provision . . . made" (Income Tax Act 1952 (c.10) s.486(1), now Income and Corporation Taxes Act 1970 (c.10) s.422(1)): the court is not bound by any authority to hold that the words "provision . . . made" mean, for the purposes of the section, a

provision which has become effective in possession or employment (*Re Westminster's Deed of Appointment*, *Kerr v Westminster* [1959] Ch. 265).

"The settlement or any provision thereof" (Finance Act 1938 (c.46) s.38(2)(a), now Income and Corporation Taxes Act 1970 (c.10) ss.445(1), 446(1)). "Provision" is used in the sense of a clause or term or part of the settlement as opposed to the sense of denoting that which is provided (*IRC v Kenmare* [1956] Ch. 483; *Saunders v IRC* [1956] Ch. 283).

"Provision of machinery" (Income Tax Act 1945 (c.32) s.15(1)); see *IRC v Guthrie* [1952] T.R. 315.

"On the provision of machinery or plant" (Capital Allowances Act 1968 (c.3) s.18(1)(a)). Where the owners of a drilling barge granted to another company an option to purchase, and then later paid a sum for the release of the option, that sum was held to be expenditure "on the provision" of plant within the meaning of this section (*Bolton v International Drilling Co.* (1982) T.C. Leaflet No.2914). See also PLANT.

"Any sum . . . with respect to the recovery of which provision is not made by any other section of this Act" (Public Health Act 1936 (c.219) s.293(1)) means unless provision is made for the manner of its recovery in any other section (*Great Yarmouth Corp v Gibson* [1956] 1 Q.B. 573).

"Provision of insurance" (Finance Act 1972 (c.41) Sch.5 Group 2 Item 1) does not include settling a claim under a contract of insurance (*National Transit Insurance Co v Customs and Excise Commissioners* [1975] 1 W.L.R. 552).

"Provision in relation to death or retirement" (Sex Discrimination Act 1975 (c.65) s.6(4)) means provision "about" death or retirement and covers all arrangements relating to retirement, including the fixing of a retirement age, provisions as to pensions and severance terms made on redundancy (*Roberts v Cleveland Area Health Authority*; *Garland v British Rail Engineering*; *MacGregor Wallcoverings v Turton* [1979] 1 W.L.R. 754; *Barber v Guardian Royal Exchange Assurance Group*, *Roberts v Tate & Lyle* [1983] 1 R.L.R. 240).

This section has to be construed in the light of art.119 of the EEC Treaty and cannot therefore be construed so widely as to include a privilege that has existed during employment and has been allowed by the employer to continue after retirement (*Garland v British Rail Engineering* [1982] 2 W.L.R. 918).

"Provision . . . of goods, facilities or services to the public" (Sex Discrimination Act 1975 (c.65) s.29(1); Race Relations Act 1976 (c.74) s.20(1)). The Secretary of State, when exercising his powers under the Immigration Act is not providing "facilities to the public" (*R. v Immigration Appeal Tribunal, Ex p. Kassam* [1980] 1 W.L.R. 1037). But the activities of the Commissioners of Inland Revenue in collecting taxes, granting relief from taxes, making monetary repayments, and giving advice on such matters, amount to the "provision of services to the public" (*Savjani v IRC* [1981] 2 W.L.R. 636). The enforcement of immigration control does not amount to discrimination in the "provision of facilities or services" (*Home Office v Commission for Racial Equality* [1981] 1 All E.R. 1042).

"Provision . . . of any services . . . or facilities" (Trade Description Act 1968 (c.29) s.14(1)(b)(i)). A false statement offering to supply a free gift with a purchase of goods was not a statement as to the provision of "services" within the meaning of this section (*Newell v Hicks* [1984] R.T.R. 135). Nor was the offer to refund part of the purchase

PROVISIONAL

price of certain goods purchased from a shop if the purchaser could show that those goods were available cheaper elsewhere (*Dixons v Roberts* (1984) 82 L.G.R. 689).

"The provision... for any building... of... heating" (Industrial Training (Construction Board) Order 1980 (SI 1980/1274) Sch.1 para.1(a)(viii)) would include all routine maintenance (*Systems Servicing (Prop Martway) v Construction Industry Training Board* [1988] I.C.R. 764).

It was immaterial any particular contract of private hire, whether made by telephone or in any other way, when determining whether a defendant had made "provision for the invitation or acceptance of bookings for a private hire vehicle" for the purposes of the Local Government (Miscellaneous Provisions) Act 1974 (c.57) ss.46(1)(d) and 80(1) (*Windsor and Maidenhead Royal BC v Khan* [1994] R.T.R. 87).

(Defective Premises Act 1972 (c.35) s.1.) The phrase "the provision of a dwelling" in s.1 of the Defective Premises Act 1972 connoted the creation of a new dwelling and did not include works of rectification to an existing building (*Jacobs v Moreton* 72 B.L.R. 92).

(Allotments Act 1925 (c.61) s.8). "Adequate provision" under s.8 meant a site upon which allotment gardening could reasonably be undertaken by persons displaced by a decision to dispose of allotment land and did not require the provision of a site which was at least as advantageous to the plot holders as that which they were required to leave (*R. v Secretary of State for the Environment, Ex p. Gosforth Allotments and Gardens Association* (CO/294/94) May 23, 1995, Laws J.).

(Local Government (Miscellaneous Provisions Act 1976 (c.57) s.19.) The providing of time share accommodation did not constitute provision of recreational facilities and the words "assistance of any kind" in s.19(1) had to be construed in that context in which the power to provide buildings was part of the power to provide facilities, and the intended beneficiaries were those intended to use or enjoy the recreational facilities and did not extend to assisting those providing the facilities (*Credit Suisse v Allerdale BC* [1996] 3 W.L.R. 894).

The term "provision" in a Himalaya clause in a bill of lading took its character from the terms "exceptions, limitations, ... conditions and liberties" with which it was grouped, all of which shared the same characteristics that they were not as such rights which entailed correlative obligations on the cargo-owners (*The Mahkutai* [1996] 3 All E.R. 502).

(Housing Benefit (General) Regulations 1987 (SI 1987/1971) Sch.1.) The "provision of adequate accommodation" extended to general counselling and support services which helped a tenant to maintain the property's fabric but did not include services which were designed to keep the tenant in the property, such as ensuring that rent was paid on time and providing for the physical or personal needs of the tenant (*R. v Sutton LBC, Ex p. Harrison, The Times*, August 22, 1997).

"Provision for raising a portion": see PORTION.

Annuity to "make provision" for a wife: see JOINTURE; REASONABLE.

"Like provisions": see LIKE.

See PROVISIONS; MADE; STATED AMOUNT FREE OF INCOME TAX; VARIED.

See also UNLAWFUL DISCRIMINATION.

PROVISIONAL AGREEMENT. The word "provisional" in this phrase may not mean "tentative" but may mean something which is going to operate until something else happens: see *Branca v Cobarro* [1947] K.B. 854.

PROVISIONAL COMMITTEE. A provisional committee is an association formed for carrying into effect the preliminary arrangements necessary to promote a scheme; it is not a partnership, for it constitutes no agreement to share in profit or loss (*Reynell v Lewis*, 16 L.J. Ex. 25).

See COMMITTEE.

PROVISIONAL CONTRACT. “ANY contract” (which means every kind of contract) which is to be “provisional only” (Companies Act 1929 (c.23) s.94(4)), meant one that was not binding on the company unless and until the company became entitled to commence business as prescribed by subs.(1) (*Re Otto Co* [1906] 2 Ch. 390).

PROVISIONAL LICENCE. Stat. Def., Road Traffic Act 1972 (c.20) s.88(2).

An order for maintenance pending suit is not a protective or provisional measure within the meaning of art.12 of Council Regulation (EC) No.1347/2000 (which empowers courts of a member State to take provisional measures in urgent cases where the courts of another member State have primary jurisdiction) (*Wermuth v* [2003] 1 W.L.R. 942, CA).

PROVISIONAL ORDER. Stat. Def., Parliamentary Costs Act 2006 s.18.

PROVISIONAL ORDER BILL. Stat. Def., Parliamentary Costs Act 2006 s.18.

PROVISIONAL PROSPECTUS. A provisional prospectus is a prospectus in proof which has to be submitted to a further meeting of those issuing it for final revision (per Kekewich J., *Hoole v Speak* [1904] 2 Ch. 735).

PROVISIONAL SPECIFICATION. See SPECIFICATION.

PROVISIONS. “Provisions”, in a Market Act, includes potatoes (*Collier v Worth*, 40 J.P. 342).

“Other provisions . . . as are usually sold or exposed to sale in public markets or fairs” (Stalybridge Improvement Act 1828 s.106): held not to include bread and cakes (*Whittle v Stalybridge Corp*, 65 L.G.R. 344).

“Provisions”, as used in the sense of regulations or rules: see *Walsh v Secretary for India*, 10 H.L. Cas. 385.

“Goods, materials, or provisions”: see USE.

See PROVISION.

PROVISO. “This word (proviso) hath divers operations. Sometimes it worketh a qualification or limitation; sometime a condition; and sometime a covenant” (Co. Litt. 146B; see further 203 b). “‘Proviso’ is a condition inserted into any deed, upon the performance whereof the validity of the deed consisteth. Sometimes it is onely a covenant, whereof see Coke, 1. 2, pp. 71, 72, in the *Lord Cromwells Case*” (Termes de la Ley). A proviso wholly repugnant to a covenant creating a personal liability is void; *secus* of a proviso only limiting such liability (*Williams v Hathaway*, 6 Ch. D. 544).

“If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the earlier clause prevails . . . But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole” (per Lord Wrenbury in *Forbes v Git* [1922] 1 A.C. 256).

A statutory proviso “is something engrafted on a preceding enactment” (*R. v Taunton, St. James*, 9 B. & C. 836).

PROVOCATION

"The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances" (per Lord Esher in *Re Barker*, 25 Q.B.D. 285).

It is said that "the terms 'proviso' and 'condition' are synonymous, and signify some quality annexed to a real estate, by virtue of which it may be defeated, enlarged, or created, upon an uncertain event" (Woodf. (24th edn), 229). That proposition is probably true when real estate is the subject-matter; but "proviso" and "condition" can hardly be regarded as convertible terms for all purposes.

A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible of several possible meanings it may be controlled by the proviso (*Jennings v Kelly* [1940] A.C. 206).

See **CONDITION**; **PROVIDED ALWAYS**.

PROVOCATION. "Provocation in law consists mainly of three elements—the act of provocation, the loss of self-control, both actual and reasonable, and the retaliation proportionate to the provocation . . . provocation in law means something more than a provocative incident" (*Lee Chun-Chuen v R.* [1963] A.C. 220).

The crying and restlessness of a 17-day-old baby could constitute provocation sufficient to enable a defendant to raise it as a defence in a murder case (*R. v Doughty* [1986] Crim.L.R. 625).

Self-induced provocation is still provocation within the meaning of the Homicide Act 1957 (c.11) s.3 (*R. v Johnson (Christopher)* [1989] 1 W.L.R. 740). The defence of provocation in a murder trial is only available when there has been a sudden and temporary loss of self-control, which need not be immediate (*R. v Ahluwalia* [1992] 4 All E.R. 889). A self-induced glue sniffing addition was not a characteristic which could raise the defence of provocation in a murder trial as it was inconsistent with the concept of the reasonable man (*R. v Morhall* [1993] 4 All E.R. 888). Provocation requires a sudden and temporary loss of control, resulting in the accused being unable to restrain himself from doing what he did. A direction to the effect that provocation requires a complete loss of control to the extent that an accused does not know what he is doing was a misdirection (*R. v Richens* [1993] 4 All E.R. 877).

See **REASONABLE MAN**.

PROVOST OFFICER. Stat. Def., Armed Forces Act 2006 s.374.

PROXIMATE. Proximate cause of loss or damage: see *Marsden v City & County Assurance*, L.R. 1 C.P. 232; *Collins v Middle Level Commissioners*, L.R. 4 C.P. 279; *Harrison v Great Northern Railway*, 33 L.J. Ex. 266; *Everett v London Assurance*, 34 L.J.C.P. 299. See further **FIRE**; **EFFECTIVE**. Cp. **CAUSA CAUSANS**; **NEGLIGENCE**.

"Proximate cause of death": see *M'Donald v Smellie*, 40 S.L.R. 702; **DIRECT CAUSE**; **EXTERNAL**; **RESULT**.

"In using the word proximate one must be careful not to mix up the idea of time with the idea of causation. An act may be the proximate cause of an effect although some time has intervened between them. In determining which of several acts was the proximate cause of the effect, mere sequence in time is not decisive" (per Kennedy L.J. in *Cory v France* [1911] 1 K.B. 114, cited **INDEMNITY**). See further *Morgan v Bettisfield Colliery Co* [1922] W.C. & I.R. 156).

The proximate cause of the loss of a ship is the effective and predominant cause, ascertained by applying commonsense standards, and not necessarily the cause which operates last. See *Yorkshire Dale Steamship Co, Ltd v Minister of War Transport* [1942] A.C. 691 (ship engaged in a war operation held to be lost in consequence of

“warlike operations” when the loss was due to a variety of causes, including a deviation of course under naval orders to avoid apprehended submarine attack, coupled with an unexpected set of the tide—negligence being disproved).

Negligence which is the proximate cause of a mistake so as to work estoppel means that which is the real cause (*Seton v Lafone*, 19 Q.B.D. 68). Cp. Contributory negligence, under NEGLIGENCE.

PROXY. A proxy is a “lawfully constituted agent” (per Smith L.J., *Re English, Scottish & Australian Bank* [1893] 3 Ch. 385), an “agent properly appointed” (per Lindley L.J., *ibid.*); and, semble (from the judgments of the Court of Appeal in that case), he need not, in the absence of a contrary regulation, be appointed in writing. However, in the court below, Williams J. said, “Under the Companies Act generally, there can be to my mind no doubt but that the authority of the proxy must be in writing”; and referring to the phrase “creditors present, either in person or by proxy” (Joint Stock Companies Arrangement Act 1870 (c.104) s.2) he added, that “means a proxy authorised by an instrument in writing”; but referring to the same phrase Smith L.J. said, it “means either in person or by his lawfully constituted agent, and not by the instrument of proxy, or the proxy paper”.

If there be an instrument of proxy, it is not absolutely necessary to produce it at the meeting for which it is to be used, unless there be some requirement to that effect (*ibid.*). See that case for a special order under Joint Stock Companies Arrangement Act 1870 (c.104) s.2, and also as to the stamp on proxies, on which latter see *Ernest v Loma Co* [1897] 1 Ch. 1; in that latter case it was also held that the date of the meeting may be filled in after the proxy paper is signed. See further VOTE. See also *Bombay-Burmah Trading Co v Shroff* [1905] A.C. 213, cited SHAREHOLDER AND NAMED; *Wills v Tozer*, 20 T.L.R. 700, cited PERSON; *McMillan v Le Roi Mining Co* [1906] 1 Ch. 331, cited VOTE. The funds of a company may be used by the directors for printing and sending out to shareholders proxy forms with the names of the proposed proxies therein, and for stamping the forms and for stamped envelopes for their return (*Peel v London & North Western Railway* [1907] 1 Ch. 5, overruling *Studdert v Grosvenor*, 33 Ch. D. 528). See further *Campbell v Australian Mutual Provident Society*, 77 L.J.P.C. 117.

A proxy is given on the implied condition that it is only to be used if the shareholder is unable or finds it inconvenient to attend the meeting. A shareholder who has given a proxy is entitled to vote in person, and in that case if the proxy also votes his vote should be rejected notwithstanding that the articles provide that the proxy is to remain valid unless revoked with certain formalities which the shareholder has not observed (*Cousins v International Brick Co Ltd* [1931] 2 Ch. 90).

PRUDENT. The prudent uninsured owner test—i.e. whether such an owner would repair or abandon a stranded vessel, as suggested by the Exchequer Chamber in *Young v Turing*, 2 M. & G. 601—is, semble, not the absolute test of a constructive total loss: see *Angel v Merchants Marine Insurance* [1903] 1 K.B. 811, cited TOTAL LOSS.

“Prudent and discreet man”: see DISCREET.

PSEUDO-PHOTOGRAPH. A pseudo-photograph is defined by s.7(7) of the Protection of Children Act 1978 as, “an image . . . which appears to be a photograph”. Two photographs sellotaped together were a pseudo-photograph: *Atkins v DPP* [2000] All E.R. 425, Q.B.D.; [2000] 1 W.L.R. 1427, Q.B.D.

PSYCHOACTIVE SUBSTANCE. Stat. Def., Psychoactive Substances Act 2016 s.2.

PSYCHOLOGICAL HARM. These words in art.13(b) of Sch.1 to the Child Abduction and Custody Act 1985 (c.60) mean substantial and not trivial psychological harm (*A. v A., Re A. (a Minor)*, *The Times*, June 13, 1987).

PSYCHOLOGICAL HEALING. In essentials psychological healing entails discovering the mental factors which are causing symptoms of physical or mental distress or nervous and emotional disorders and helping the individuals to readjust themselves to those factors through their mental processes and so to resort them to health without resort to the aid of surgical treatment (*Re Osmund, Midland Bank Executor & Trustee Co v Mason* [1944] Ch. 66, reversed on appeal, [1944] Ch. 206).

PUB. See TIED PUB.

PUBLIC. "The public"—e.g. as regards an undue preference which was to be guarded against "in the interests of the public" (Railway and Canal Traffic Act 1888 (c.25) s.27(2))—means "nothing wider than the British public, at any rate", but it does not mean anything so narrow as the general interests of the particular localities which may be affected by the matters in question: it means those interests which concern the public at large. "Whilst it may, undoubtedly, be a most difficult inquiry whether this or that be for the public good, I would point out that the question is not altogether foreign to many which have from time to time been freely entertained by the courts. Many a contract has been held invalid as contrary to PUBLIC POLICY; and although, warned perhaps by the economic errors of their predecessors, judges have grown more cautious in laying down what is and what is not contrary to public policy, yet the jurisdiction remains and is constantly exercised" (per Wills J., *Liverpool Corn Trade Association v London & North Western Railway* [1891] 1 Q.B. 120). It is suggested that the older cases on the construction of contracts in restraint of trade may usefully be studied as examples of those remarks, and that the persons entitled to complain of a common nuisance furnish an illustration of what is generally connoted by "the public". See further *Inland Revenue Commissioners v Scott* [1892] 2 Q.B. 152, cited MANNER.

Road Traffic Act 1930 (c.43) s.121: in relation to roads to which the public have access meant the public generally and not the special class of members of the public who for business or social purposes have occasion to resort to premises (*Harrison v Hill*, 1932 S.C. (J.) 13).

(Finance Act 1922 (c.17) s.21(b); Finance Act 1927 (c.10) s.31.) The ordinary meaning of the word "public" was that given in Murray's Oxford Dictionary: "The community as an aggregate, but not in its organised capacity; hence, the members of the community" (*Tatem Steam Navigation Co v Inland Revenue Commissioners* [1941] 2 K.B. 194). See also IN PUBLIC.

Company "in which the public are substantially interested" (Income Tax Act 1952 (c.10) s.256; Finance Act 1965 (c.25) s.79): see *Commissioner of Income Tax v H. Bjordal* [1955] A.C. 309, where it was held that the brother of the controlling shareholder could be "the public" for the purposes of this section. But see *IRC v Park Investments* [1966] Ch. 701.

"The word 'public' is appropriate to denote those outside the immediate circle of those who control the company. One would not, on any ordinary use of the word, describe a man's child or partner, and above all his wife, as being a member of the public in relation to himself" (per Pennycuik J. in *Morrison Holdings v IRC* [1966] 1 W.L.R. 553).

One of the characteristics of a retail shop is that the public can resort to it for the purposes of having particular wants supplied and services rendered therein. By

“public” is meant such members of the public as require the particular goods or services concerned and not the public at large (*Geo Henderson Ltd v Dumfries and Galloway Assessor* (1962) S.L.T. 301).

“Public” (Protection of Depositors Act 1963 (c.16) s.2(1)). A person who becomes a member of a society, and as such receives a circular, does not cease to be a member of the “public” for the purposes of this section (*R. v Delmayne* [1970] 2 Q.B. 170).

“Public at large” (Race Relations Act 1965 (c.73) s.6(2)). A single member of parliament and his family is not “the public at large” or a “section of the public” within the meaning of this section (*R. v Button* [1967] 2 Q.B. 51).

A bequest for the “public”, or for “public purposes”, is, by the law of Scotland as well as that of England, too vague and is bad (*Blair v Duncan* [1902] A.C. 37, cited CHARITABLE PURPOSE); so, if it be for “charitable OR public purposes” (*Blair*). “Even giving to the word ‘charitable’ the widest extension ever allowed to it, there are many ‘public’ purposes completely outside it. Giving to the word ‘charitable’ its proper meaning as it occurs in a Scottish Testament, its comprehensiveness still further falls short of the word ‘public’. As was suggested at the Bar, the trustee would be within his powers if he gave this 1000 to the election fund of any of the political parties he pleased. It would be equally within his powers to subscribe the money towards raising a yeomanry regiment. Each of the purposes is ‘public’; neither is ‘charitable’” (per Lord Robertson, *Blair*). See further AND. If the bequest were for the benefit of the “public” of a specified locality, it would probably be good (*Re Allen* [1905] 2 Ch. 400, cited PUBLIC PURPOSE). See also *Re Tetley* [1924] A.C. 262.

It is not always easy to determine when a court or tribunal is sitting in public. But a requirement in the Employment Tribunals (Constitution and Procedure) Regulations 1993 (SI 1993/2687) for a particular kind of hearing to take place in public was not complied with by proceedings which took place in a room separated from the part of a building normally used for tribunal hearings by a door marked “private” and fitted with a push-button lock. (*Storer v British Gas Plc* [2000] 1 W.L.R. 1237, CA).

A reference to the public, in the context of the risk which a person poses to the safety of the public, should be construed as referring only to the section of the public with whom he is likely to come into contact (*Anderson v Scottish Ministers* [2002] 3 W.L.R. 1460 at 1475, PC per Lord Hope of Craighead).

The Labour Party is not a section of the public for the purposes of s.25 of the Race Relations Act 1976 (*Watt (formerly Carter) v Ahsan* [2007] UKHL 51).

“The Public”: Stat. Def., Gaming Act 1968 (c.65) s.42(8).

See PLACE OF PUBLIC RELIGIOUS WORSHIP.

See MISFEASANCE IN PUBLIC OFFICE; FUNCTIONS OF A PUBLIC NATURE; PUBLIC BENEFIT; PUBLIC DOCUMENT; PUBLIC INTEREST; PUBLIC SERVICE; ROAD; IN PUBLIC.

PUBLIC ACCESS. See *Young v Neilson*, 20 Rett. 62, cited ACCESS.

PUBLIC ACT OF PARLIAMENT. “Public Act of Parliament”, “Public and General” Act, means an Act which affects the public at large, as distinguished from one which only or chiefly affects private, personal, or local interests: see hereon *Richards v Easto*, 15 L.J. Ex. 163; *R. v London CC* [1893] 2 Q.B. 454; LOCAL ACT OF PARLIAMENT. See hereon Lord Davey, *London v Netherlands Steamboat Co* [1906] A.C. 263, cited TAXES. See Interpretation Act 1889 (c.63) s.9.

The Toleration Act was held a private Act (*R. v Larwood*, 1 Salk. 168), but was declared a public Act by Nonconformist Act 1779 (c.44) s.4.

Cp. “Special Act”, under SPECIAL.

PUBLIC ADVANTAGE. See *Re Pardoe* [1906] 2 Ch. 184, cited PUBLIC UTILITY.

PUBLIC AREA. Stat. Def., “a place in the open air to which the public has access, without payment, as of right, and which is not in a market area,” Licensing of Pavement Cafés (Northern Ireland) Act 2014 s.1.

PUBLIC AUCTION. See AUCTION.

PUBLIC AUTHORITY. A Canadian soldier on duty is a “public authority” within s.21(1) of the Limitation Act 1939 (c.21) (*Reeves v Deane-Freeman* [1953] 1 Q.B. 459).

A licensing court is a public authority (*Campbell v HM Advocate* (1941) S.C.(J.) 86).

“As public authorities” (Council Directive 77/388 [Sixth VAT Directive] art.4(5)). Activities carried out “as public authorities”, within the meaning of art.4(5), were those carried out by bodies governed by public law in the context of the legal order peculiar to them, and excluded activities which they carried out under the same legal conditions as traders in the private sector (*Ufficio Distrettuale delle Imposte Dirette di Fiorenzuola d’Arda v Comune di Carpaneto Piacentino*, *The Times*, November 15, 1989).

A body which has no responsibilities to the public is not a public authority for the purposes of s.6(3) of the Human Rights Act 1998 merely because it performs acts on behalf of a public body which would constitute public functions if they were performed by the public body itself. A housing association was therefore not necessarily a public authority, but it could be in a case where its role was so closely assimilated to that of a local authority that it was performing a public function (*Poplar Housing and Regeneration Community Association Ltd v Donoghue* [2001] 4 All E.R. 604, CA).

For analysis of *Poplar v Donoghue* see *Modem Law Review*, Vol.66, January 2003, 113–123.

A Parochial Church Council is a public authority for the purposes of s.6(3) of the Human Rights Act 1998—*Aston Cantlow PCC v Wallbank* [2001] 3 W.L.R. 1323, CA. For a critique of the decision and of the use of Hansard under the rule in *Pepper v Hart* in construing s.6(3), see *Public Law* [2001] pp.651–653.

Stat. Def., para.8(2) of Sch.11 to the Financial Services and Markets Act 2000 (c.8) (including foreign bodies); see also the (variable) list in Sch.1 to the Freedom of Information Act 2000 (c.36).

The managers of a hospital are a functional public authority for the purposes of s.6 of the Human Rights Act 1998 (duty not to act contrary to Convention) (*R. (A.) v Partnerships in Care Ltd* [2002] 1 W.L.R. 2610, Q.B.D.).

Neither a government department nor the Crown is a public authority within the meaning s.4(2) of the Prevention of Corruption Act 1916 (c.64) (*R. v Natji* [2002] 1 W.L.R. 2337, CA).

For the purposes of s.6 of the Human Rights Act 1998 (c.42) a public authority can be either a core public authority exercising only governmental functions of a public nature or a hybrid public authority exercising some functions of a public nature and some of a private nature. The Church of England has special links with central government being the established church—but it is essentially a religious organisation not a governmental organisation. The functions of parochial church councils are pastoral and administrative in nature and not public, whether or not the public have

certain rights in relation to them. In particular, the function of maintaining the fabric of a church is not a public function (*Aston Cantlow Parochial Church Council v Wallbank* [2003] 3 W.L.R. 283, HL).

In relation to a company limited by guarantee established by a council to conduct the management of a farmers' market, the company was a public authority for the purposes of the Human Rights Act 1998 because its decisions were amenable to judicial review, as relating to the exercise of statutory powers in the public interest (*R. (Beer) v Hampshire Farmers' Markets Ltd* [2004] 1 W.L.R. 233, CA).

As to the meaning of public authority in the Human Rights Act 1998 generally, see the Seventh Report for Session 2003–04 of the Joint Committee on Human Rights (HL 39; HC 382).

Note that while the breadth of the concept of public authority in the context of the Human Rights Act 1998 is likely to have some cross-contextual influence on other uses of the expression in contemporary contexts, in documents prior to the passing of that Act, in particular, the expression may be intended to have a much narrower meaning. For a use excluding judges and magistrates, see *Re McFarland* [2004] 1 W.L.R. 1289, HL.

"Before the Court of Appeal... [Counsel] sought to argue that the jury, as a separate entity, fell to be regarded as a 'public authority' for the purposes of s.6(3) of the Human Rights Act 1998. It is, however, for the court, comprising both the judge and jury, that the United Kingdom Government is responsible in international law before the European Court of Human Rights. It is accordingly appropriate to treat the court made up of both judge and jury as the public authority for the purposes of s.6." (*R. v Mushtaq* [2005] UKHL 25 at [52] per Lord Rodger of Earlsferry.)

Stat. Def., Civil Evidence Act 1995 (c.38) s.9(4); Human Rights Act 1998 (c.42) s.6; Northern Ireland Act 1998 (c.47) s.75(3).

A private care home providing care under contract with a local authority does not thereby exercise a public function (and become a public authority) for the purposes of s.6 of the Human Rights Act 1998 (*Y.L. v Birmingham City Council* [2007] UKHL 27).

A railway company is not a public authority for the purposes of s.6(3) of the Human Rights Act 1998 (*Cameron v Network Rail Infrastructure Ltd (formerly Railtrack Plc)* [2006] EWHC 1133 (QB)).

A private care home accommodating residents in accordance with arrangements made with a local authority in pursuance of the authority's statutory functions is not a public authority for the purposes of the Human Rights Act 1998 (*R. (Johnson) v Havering London Borough Council* [2007] EWCA Civ 26).

The British Broadcasting Corporation is a public authority for the purposes of the Freedom of Information Act 2000 in some circumstances but not in all (*BBC v Sugar* [2008] EWCA Civ 191).

Government organisations, such as members of the Scottish Executive (*Somerville v Scottish Management* [2007] UKHL 44).

Stat. Def., Natural Environment and Rural Communities Act 2006 s.30(2).

For discussion of some of the political controversy surrounding the meaning of "public authority" in the context of the Human Rights Act 1998, see the adjourned Second Reading of the Human Rights Act 1998 (Meaning of Public Authority) Bill 2006–07, HC Deb, June 15, 2007, cc.1036–47. See also the Ninth Report of the Joint Committee on Human Rights, Session 2006–07, "The Meaning of Public Authority Under the Human Rights Act", HC 410.

A housing trust is a public authority for purposes of the Human Rights Act 1998 (*R. (Weaver) v London and Quadrant Housing Trust* [2008] EWHC 1377 (Admin)).

Stat. Def., Marine and Coastal Access Act 2009 s.322.

Public authority's "act, neglect, or default, complained of": see ACT.

Stat. Def., Public Service Pensions Act 2013 s.37.

"219. The Defendants contend that section 6(3)(b) applies to the Claimant, on the bases that (a) it provides housing in the public sector (and in this case granted the Defendants a tenancy after a referral from the local housing authority and further to an arrangement between the Claimant and that authority) and (b) its functions are of a public nature.

220. The Defendants rely especially on *R. (Weaver) v London and Quadrant Housing Trust* [2010] 1 WLR 363. There, the Court of Appeal explained that in determining whether a body is a public authority there is 'no single test of universal application' (per Lord Nicholls in *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2003] UKHL 37; [2004] 1 AC 546) and the courts should adopt what Lord Mance in *YL v Birmingham City Council (Secretary of State for Constitutional Affairs intervening)* [2007] UKHL 27; [2008] AC 95 described as a 'factor-based approach'...

222. It is of course correct that the Claimant provides social housing. But that is not, in isolation, sufficient (and see per Elias LJ in *Weaver* at [72]).

223. In contrast to the position in the *Weaver* case (see paras [220]–[221] above) which did not concern a fully mutual housing co-operative, and where the claimant was and is a large social landlord managing some 70,000 homes (compared to the Claimant's 36 homes), the unquestioned evidence shows that:

(1) The Claimant does not rely on any public subsidy to operate. The Claimant was set up with the benefit of a Housing Corporation grant and finance from private mortgages. The grant is repayable to the Housing Corporation on a disposal of the Claimant's properties, so is in effect a loan. The Claimant has received no further public funds. It derives its income from rent charged to its tenants/members and interests on reserves.

(2) The Claimant does not take the place of local government in providing social housing; its allocations are not controlled by a local authority, nor has it obtained its housing stock from local government. The Claimant has an informal nominations arrangement with Wandsworth Council, but the Claimant retains ultimate autonomy over the approval of new tenants. There has been no voluntary transfer of housing stock from a public authority to the Claimant.

(3) The Claimant does not charge market rents. However, it does not provide 'subsidised' housing; it receives no subsidy. It has low rents because it exists for the benefit of its members (rather than to make profit). As a very small landlord, it does not contribute significantly to the achievement of the Government's housing objectives.

(4) Whilst there is an incidental, albeit small, public benefit in the provision of housing by the Claimant, its *raison d'être* is the provision of a benefit for its members. Indeed, it is a requirement of its registration as an industrial and provident society for it to operate for the benefit of its members, rather than for society at large.

(5) Fully mutual housing associations are not subject to statutory regulation in the same way as other housing associations. The very complaint made by the Defendants in these proceedings is that their tenancy is not afforded assured or secure status by the

statutory regime. This is because the government has decided that such protections are not necessary or appropriate. Any tenant becoming a member of a fully mutual housing association will sign up to the association's principles and thus must be taken to be aware of its regulatory status. As a result, it cannot be said that fully mutual housing associations form part of a public interest scheme to protect the vulnerable or less well off.

(6) The Claimant is regulated by the Financial Conduct Authority as a co-operative, and by the Homes and Community Agency ('HCA') as a housing association. Unlike London and Quadrant, the Claimant is regulated as a small provider. Regulation does not extend far beyond annual scrutiny of its accounts and regulatory return.

224. Moreover, and as stressed by the Claimant, its mutual nature, and the fact that its members own and control it, is a further inconsistency with the notion that the Claimant stands as a public authority in respect of the Defendants or that it exercises functions which can properly be described as public for the Defendants' benefit.

225. In all the circumstances disclosed by the evidence filed on behalf of the Claimant and not disputed by the Defendants, I accept the submission of the Claimant and the SoS that the Claimant should not be considered to be exercising functions of a public nature for the purposes of s.6(3)(b)." (*Southward Housing Co-Operative Ltd v Walker* [2015] EWHC 1615 (Ch).)

"The issue is of course whether FBUK can be sued pursuant to ss 6 and 7 of the Human Rights Act 1998, and the answer is that it plainly cannot. ... By s 6(1) of the 1998 Act it is unlawful for a 'public authority' to act in a way which is incompatible with a Convention right, such as Article 8. Section 7(1) of the Act provides that a person who claims that a 'public authority' has acted incompatibly with a Convention right may bring proceedings 'against the authority'. There is no exhaustive definition of the term 'public authority', but the terms 'core' and 'hybrid' public authority have been coined to identify two categories of authority. The first is a person or body which carries out only public functions. The term 'hybrid public authority' is used to describe a person or body which fits the description in s.6(3)(b) of the 1998 Act, which provides that 'In this section "public authority" includes – ... (b) any person certain of whose functions are functions of a public nature ...' The proper interpretation and application of that inclusive definition have been considered on a number of occasions, in Parliament and in the courts. ... It is of course correct to say that the mere fact that an organisation is a commercial enterprise does not prevent it qualifying as a public authority within the scope of s.6(3)(b). But by the criteria advocated by the claimant, almost any commercial enterprise providing valuable services to the public at large would qualify as a 'public authority'. There is no difficulty in rejecting these arguments as clearly absurd. Facebook does not act 'in the public interest' in the relevant sense, nor can it conceivably be described as performing 'functions of a public nature'." (*Richardson v Facebook* [2015] EWHC 3154 (QB).)

See AUTHORITY; PUBLIC BODY.

See also PUBLIC NATURE.

PUBLIC BALL. A "public dinner or ball" (Revenue Act 1863 (c.33) s.20(3)) was one in aid of, or connected with, some public purpose, e.g. a charity, and to which members of the public were admitted, such admission being generally on payment or with the expectation of a subscription; though, probably, payment or such an expectation was not a necessary ingredient to a public dinner or ball, nor was a dinner or ball less public on account of power being reserved to exclude improper persons; if,

PUBLIC

however, the dinner or ball was solely for the entertainment or amusement of its promoters and their friends, and one to which the public were in no way invited, it was private. Whether or not a particular dinner or ball was public or private was a question of fact (*Maloney v Lingard*, 42 S.J. 193).

Semble, this construction applied to “public dancing, singing, music, or other public entertainment of the like kind” (Public Health Act 1890 (c.59) s.51(1)).

See PUBLIC DANCING; PUBLIC SINGING.

PUBLIC BATH. See BATH.

PUBLIC BENEFIT. As to what is for the “public benefit”, see *Att-Gen v Terry*, 9 Ch. 423, disapproving *R. v Russell*, 6 B. & C. 566.

Payments by a municipal corporation to a university college in the borough were not “for the public benefit of the inhabitants and improvement of the borough” within the Municipal Corporation Act 1882 (c.50) s.143 (*Att-Gen v Cardiff* [1894] 2 Ch. 337).

A bequest for the public benefit is a good charity (Tudor Char. Trusts (5th edn), 11 et seq.) See PUBLIC CHARITY.

Stat. Def., Charities Act 2006 ss.3 and 4.

See PUBLIC.

PUBLIC BENEFIT REQUIREMENT. Stat. Def., Charities Act 2011 s.4.

PUBLIC, BENEVOLENT OR CHARITABLE PURPOSES. A bequest in these terms is void for uncertainty: see *Houston v Burns* [1918] A.C. 337; *Re Davis*, 128 L.T. 735.

PUBLIC BILL. Stat. Def., Parliament Act 1911 (c.13) s.5.

PUBLIC BODY. A power to trustees to invest in “stocks, or funds of Government securities, or in debentures, mortgages, or securities of corporations or public bodies, municipal or commercial”, authorities the purchase of debentures in, e.g. the Kensington Palace Hotel Company, or W. Whiteley Ltd (*Gordon v Gordon*, 49 S.J. 593).

Cp. PUBLIC COMPANY; *Re Castlehow* [1903] 1 Ch. 352, and *Re Stanley* [1906] 1 Ch. 131, cited PUBLIC COMPANY. See Prevention of Corruption Act 1916 (c.64) s.4.

“Public body” (Prevention of Corruption Act 1916 (c.64) s.2) includes local and public authorities of all descriptions (see s.4(2) of the same Act); it does not include the National Coal Board which is not a public authority (*R. v Newbould* [1962] 2 Q.B. 102). A “public body” is one, whether elected or created by statute, which functions and performs its duties for the benefit of the public, as opposed to private gain (*R. v Joy and Emmony* (1975) 60 Cr.App.R. 132), and it has been held, disapproving *R. v Newbould* (above), that a gas board constituted under the Gas Act 1948 (c.67) s.1 is a “public body” (*R. v Manners*; *R. v Holly* [1978] A.C. 43; *R. v Hirst and McNamee* (1975) 64 Cr.App.R. 151).

For the purposes of s.7 of the Public Bodies Corrupt Practices Act 1889 as amended by s.4(2) of the Prevention of Corruption Act 1916, “public body” does not include a government department or the Crown (*R. v Natji*, T.L.R., March 12, 2002, CA; PL [2002] 357, CA).

Stat. Def., “a government department or a body exercising public functions” (s.17(5) and (6) of the Government Resources and Accounts Act 2000 (c.20)).

Stat. Def., “a body which—

- (a) exercises functions of a public nature, or
- (b) is entirely or substantially funded from public money” (Public Audit (Wales) Act 2004 (c.23) s.12).

Stat. Def., Criminal Appeal Act 1995 (c.35) s.22(1).

Stat. Def., Corporation Tax Act 2009 s.926.

See PUBLIC AUTHORITY; PUBLIC DUTY; PURSUANCE.

PUBLIC BRIDGE. A bridge of public utility, even though built by an individual, if dedicated to and accepted by the community, was a public bridge (*R. v Yorkshire*, 2 East 342; *R. v Bucks*, 12 East 192). A bridge in a highway was a public bridge (Bridges, Cinque Ports and Highways Act 1530 (c.5) s.1), and “public bridges” “may safely be defined to be such bridges as all His Majesty’s subjects have used freely and without interruption, as of right, for a period of time competent to protect them from being considered as wrongdoers in respect of such use” (per Ellenborough C.J. *R. v Bucks*, 12 East 204); and such user might be intermittent, e.g. only on occasions of floods (*R. v Northampton*, 2 M. & S. 262; *R. v Devon, Ry. & Moo.* 144). See further *R. v Southhampton*, 17 Q.B.D. 424.

See BRIDGE; COUNTY BRIDGE; PRIVATE BRIDGE.

PUBLIC BUILDING. A union workhouse was a “public building” for the purposes of rating under a local Improvement Act (*Bedford Union v Bedford Improvement Commissioners*, 7 Ex. 777); and so was an infirmary (*Bedford Infirmary v Bedford Improvements Commissioners*, 21 L.J.M.C. 229). In *Arnell v London & North Western Railway* (12 C.B. 695) a bridge over a railway was, on the context in a Local Paving Act, held not to be a “public building”; but Maule and Talfourd JJ. held that the fence-walls of the bridge were such a building, and from the judgment of Maule J., it may probably be said that any building (including a fence-wall or dead wall) built pursuant to an Act of Parliament and for the convenience and safety of the public, was a “public building”; but see per Jervis C.J., *Arnell v Regent’s Canal Co*, 14 C.R. 576.

So, a workhouse was a “public building”, an “electrical station” in which is a non-textile factory, within Sch.6 Pt 1(20) of the Factory and Workshop Act 1901 (c.22) (*Mile End Old Town Guardians v Hoare* [1903] 2 K.B. 483).

An ambulance was not a “public building” within the Metropolitan Building Acts 1855 and 1878, so as to require deposit of plans, etc. (*Josolyne v Meeson*, 53 L.T. 319).

Stat. Def., London Building Act 1930 (c. clviii) s.5; London Building Acts (Amendment) Act 1939 (c. xcvi) s.4.

See INHABITED.

PUBLIC BURIAL PLACE. See BURIAL.

PUBLIC BUSINESS. See PUBLIC TRADE OR BUSINESS.

PUBLIC CAPACITY. (General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules 1980 (SI 1980/858) r.6(2), Appendix r.2.) An officer of a family practitioner committee is a person acting in a “public capacity” for the purposes of these rules (*Prasad v General Medical Council* [1987] 1 W.L.R. 1697).

PUBLIC CARRIAGE ROAD. “Turnpike road or public carriage road”: see TURNPIKE ROAD; PUBLIC ROAD.

PUBLIC CEREMONY. “Public ceremony or gathering”, as regards the Licensing (Consolidation) Act 1910 (c.24) s.57: see *R. v Inglis*, 90 L.J.K.B. 770. See also SPECIAL OCCASION.

PUBLIC CHAPEL. Stat. Def., Marriage Act 1949 (c.76) s.20(3).

PUBLIC CHARITABLE INSTITUTION. “Public charitable institution”, “public charitable purpose”: see PUBLIC PURPOSE; CHARITABLE PURPOSE.

PUBLIC CHARITY. An institution for the charitable benefit of a large and important body of poor persons is a "public charity", as well for the purposes of construing that phrase in a will as for obtaining a statutory exemption from rating (*Att-Gen v Pearce*, 2 Atk. 87; *St Thomas's Hospital v Lambeth*, L.R. 7 H.L. 477; *Hall v Derby*, 16 Q.B.D. 163). See further *R. v Stapleton*, 33 L.J.M.C. 17.

But there may be a public charity without any poverty in the recipients, e.g. as in *Newland v Att-Gen*, 3 Mer. 684, cited *GOVERNMENT*, *Nightingale v Goulbourn*, 16 L.J. Ch. 270, cited *GREAT BRITAIN*, and *Re Stephens* [1892] W.N. 140, cited *SET OUT*—or a mess library for the officers of a named regiment, it being "a direct PUBLIC BENEFIT by increasing the efficiency of the Army" (per Farwell J., *Re Good* [1905] 2 Ch. 60, referring to the fourth class of charities in Lord Macnaghten's judgment in *Income Tax Commissioners v Pemsel* [1891] A.C. 542, cited *CHARITY*); so of a fund for providing an annuity for the benefits of a volunteer corps (*Re Stratheden and Campbell* [1894] 3 Ch. 265); but see *Re Nottage* [1895] 2 Ch. 649, cited *CHARITY*; *Re Gray*, [1925] W.N. 71.

As a general rule, a friendly society, even if it has honorary members, is not a public charity (*Re Clark*, 1 Ch. D. 497; *Re Dutton*, 4 Ex. D. 54; *Cunnack v Edwards* [1896] 2 Ch. 679; *Smith v Lord Advocate*, 36 S.L.R. 547; *Braithwaite v Att-Gen* [1909] 1 Ch. 510). But see *Spiller v Maude*, 32 Ch. D. 158 n, on which latter case see *Re Lacey* [1899] 2 Ch. 149, cited A; *Pease v Pattinson*, 32 Ch. D. 154; *secus* if it received voluntary donations and be founded for members in distressed circumstances, or otherwise in poverty (*Re Buck* [1896] 2 Ch. 727).

"Public charitable purposes": Stat. Def., Charitable Trustees Incorporation Act 1872 (c.24) s.14.

See *CHARITABLE PURPOSES*; *CHARITY*; *PUBLIC HOSPITAL*; *PUBLIC PURPOSE*.

PUBLIC COMPANY. "One test whether a company is a public company is whether the members have a right to transfer their shares" (Buckl. (12th edn), 77, citing *Re Griffith, Carr v Griffith*, 12 Ch. D. 655). "The words 'public company' import, no doubt, some relation to the public; but the decisions leave it doubtful what that relation should be. It may mean a company the shares in which are open to all the public" (per Byles J., *Nicholls v Rosewarne*, 6 C.B.N.S. 493).

It is suggested that a public company is one the constitution or affairs of which is or are made public. Therefore, a company which has a public officer through whom it may sue or be sued, or which has to make returns to a public office from which the names and places of abode of its members or the state of its affairs, may be ascertained, was a "public company" within Judgments Act 1838 (c.110) s.14 (*Macintyre v Connell*, 20 L.J. Ch. 284; *Graham v Connell*, 19 L.J. Ex. 361). So, a company incorporated under Companies Act 1862 (c.89) (whose memorandum of association and articles were necessarily public documents) was a "public company" within a testamentary power authorising investments in the securities of "any railway or other public company" (*Re Sharp, Rickett v Sharp*, 45 Ch. D. 286); and such a company was a "public company" within Apportionment Act 1870 (c.35) s.5 (*Re Lysaght* [1898] 1 Ch. 115, cited *ACCRUE*); but a public body for the execution of public functions was not a "public company" within an investment clause (*Wood v Middleton*, 79 L.T. 155).

Within an investment clause in the will of a person domiciled in the United Kingdom, "public company", generally, means a company in the United Kingdom (*Re Castlehow* [1903] 1 Ch. 352; cp. *Public Trustee v Blacker-Douglas* [1905] 1 I.R. 532,

cited DEBENTURE). But where the words were “ANY corporation or company, municipal, commercial or otherwise”, Buckley J. held that investments were authorised in any company, incorporated or unincorporated (not being what is commonly called a FIRM), formed or registered in the United Kingdom but carrying on business abroad, and also any such company formed or registered outside the United Kingdom (*Re Stanley* [1906] 1 Ch. 131; see COMPANY). See further *Re White* [1913] 1 Ch. 231, cited PRIVATE COMPANY. Cp. *Gordon v Gordon*, 49 S.J. 593, cited PUBLIC BODY.

“Public company” (Larceny Act 1916 (c.50) s.20(1)(ii)) included a private company incorporated under the Companies Acts (*R. v Davies (No.3)* [1955] 1 Q.B. 71).

Stat. Def., Companies Act 1985 (c.6) s.1(3); Companies Act 2006 s.4.

See TRADING AND OTHER PUBLIC COMPANIES.

PUBLIC CONCERN. “Not of public concern and... not for public benefit” (Defamation Act 1952 (c.66) s.7). Whether a publication lost the protection of qualified privilege under s.7(3) because it was “not of public concern... and not for public benefit” was a question of fact to be decided in each case (*Tsikata v Newspaper Publishing Plc* [1997] 1 All E.R. 655).

PUBLIC CONTRACT. “It submits that the question what is a ‘public contract’ for the purposes of the EU public procurement regime is a question of EU law. Under English law a contract requires agreement between two distinct juridical persons. But EU law has developed its own autonomous concepts for determining whether the parties to an agreement are sufficiently distinct for it to constitute a ‘public contract’. It is fundamental to the operation of the regime that it applies only to contracts awarded to external contractors, and is not intended to prevent a public authority from procuring the relevant goods or services from its own resources. This gives rise to no particular difficulty where a public authority seeks to make use of services that it can provide for itself in-house. The problem arises where the public authority wishes to procure them from a distinct juridical entity with which the authority is closely associated or from a distinct juridical entity which is closely associated with a consortium of authorities to which it belongs.... There is now a substantial body of case law in the Court of Justice of the European Union on this issue. The leading decision is *Teckal Srl v Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia* (Case C-107/98) [1999] ECR I-8121 (“Teckal”).... As for the meaning and effect of the 2006 Regulations, I think that it would be wrong to apply a literal approach to the words and phrases used in it, such as in the definitions of ‘public contract’ and ‘public service contract’. A purposive approach should be adopted. As Lord Diplock in *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850, 881 indicated, this means that regard must be had to the context in which the Regulations were made, to their subject matter and to their purpose. Would it be inconsistent with the achievement of that purpose if the Teckal exemption were not to be held to apply to them? Was this an exemption to which Parliament must have intended them to be subject? Having regard to the background of EU law against which the Regulations were made, the definitions in the Regulations can be taken to express the same idea as those in the Directive. Thus something which amounts to a contract in domestic law can nevertheless be held, without doing undue violence to the words of the Regulations, not to be a relevant contract for the purpose of the public procurement rules.” (*Brent London Borough Council v Risk Management Partners Ltd* [2011] UKSC 7.)

PUBLIC CONVENIENCE. See CONVENIENCE; FACILITIES; PUBLIC PLACE; PUBLIC SERVICE.

PUBLIC CORPORATION. Stat. Def., Finance (No.2) Act 1997 (c.58) s.5(1).

PUBLIC DANCING. A “house, room garden, or other place, kept for public dancing, music, or other public entertainment of the like kind” (Disorderly Houses Act 1751 (c.36) s.2; made perpetual by Thefts and Robberies Act 1754 (c.19)) had to be so used (to the knowledge of the defendant) on more than one occasion (*Marks v Benjamin*, 5 M. & W. 568, cited KEEP); but exclusive use, or one for payment, was not essential (*Marks*; *Gregory v Tuffs*, 6 C. & P. 271), yet the dancing or music had to be a substantial, and not merely a subsidiary, part of the entertainment (*Guaglieni v Matthews*, 13 W.R. 679; *R. v Tucker*, 2 Q.B.D. 417).

Rinking is not dancing (*R. v Tucker*, above), nor are performances on the tightrope, or other rhythmic movements in a circus (*Guaglieni v Matthews*, above), though it is not necessary to “public dancing” that the dancing should be by the public (*Marks v Benjamin*, above).

Music and dancing at a proprietary club can be “public dancing or music” within s.51 of the Public Health Acts Amendment Act 1890 (c.59) even though only bona fide members and guest are admitted (*Beynon v Caerphilly Licensing Justices* [1970] 1 W.L.R. 369; overruling *Austin v Glendinning*, 132 J.P. 513). “The test of the matter is not whether one, two or three or any particular number of members of the public were present, but whether on the evidence, the proper inference is that the entertainment was open to the public in the sense that any reputable member of the public on paying the necessary fee could come into and take part in the entertainment” (per Lord Parker C.J. in *Gardner v Morris*, 59 L.G.R. 187).

See PUBLIC BALL.

PUBLIC DEBT. Stat. Def., Debt Relief (Developing Countries) Act 2010 s.2.

PUBLIC DEMONSTRATION. Picketing on private land, which persisted even after a valid request to leave, was not a “demonstration” in the sense of a public manifestation of feeling such as a procession or mass meeting, so that although it occurred in public it was not a “public demonstration” within the meaning of byelaw 5(34) of Heathrow Airport Byelaws 1972 (*British Airports Authority v Ashton* [1983] 1 W.L.R. 1079).

PUBLIC DINNER. See PUBLIC BALL.

PUBLIC DOCUMENT. The principle upon which a public document is admissible is that there “should be a public inquiry, a public document, and made by a public officer. I do not think that ‘public’ there is to be taken in the sense of meaning the whole world. I think an entry in the books of a manor is ‘public’, in the sense that it concerns all the people interested in the manor. And an entry, probably, in a corporation book concerning a corporate matter or something in which all the corporation is concerned, would be ‘public’ within that sense. But it must be a public document, and it must be made by a public officer. I understand a ‘public document’ there to mean a document that is made for the purpose of the public making use of it, and being able to refer to it. It is meant to be where there is a judicial, or quasi judicial, duty to inquire as might be said to be the case with the bishop acting under the writs issued by the Crown; that may be said to be quasi judicial. He is acting for the public when that is done; but I think the very object of it must be that it should be made for the purpose of being kept public, so that the persons concerned in it may have access to it afterwards” (per Lord Blackburn, *Sturla v Freccia*, 5 App. Cas. 643, 644). See

hereon *Evans v Merthyr Tydfil* [1899] 1 Ch. 241; *Moriarty v Moriarty*, 18 W.R. 145. See further *Mercer v Denne* [1905] 2 Ch. 538; *North Staffs Railways v Hanley Corporation*, 73 J.P. 477; *Thrasyvoulos Ioannou v Papa Christoforos Demetriou* [1952] A.C. 84; *Hannou v Demetriou* [1952] 1 All E.R. 179.

As to what is a public document the republication of which is not a libel, except there be malice, see *Fleming v Newton*, 1 H.L. Cas. 363; *Cosgrave v Trade Auxiliary Co*, I.R. 8 C.L. 349; *Williams v Smith*, 22 Q.B.D. 134; *Searles v Scarlett* [1892] 2 Q.B. 56.

See PUBLIC BOOK; DOCUMENT.

See Civil Evidence Act 1968 (c.64) s.9.

PUBLIC DRAIN. The Eau Brink Cut near King's Lynn, is not a "public or parish drain" (King's Lynn Improvement Act 1823 (c. 1v) s.35) (*Coulton v Amber*, 14 L.J. Ex. 10).

See DRAIN.

PUBLIC DUTY. A public authority—e.g. a municipal corporation, or a local board—even when carrying on a business or a trade such as supplying water or gas, was exercising a "public duty" within the Public Authorities Protection Act 1893 (c.61) s.1 (*The Ydun* [1899] P. 239, 240; *Parker v London CC* [1904] 2 K.B. 501; *Lyles v Southend-on-Sea* [1905] 2 K.B. 1; *Palmer v Grand Junction Railway*, 8 L.J. Ex. 129; and *Carpue v London & Brighton Railway*, 5 Q.B. 747; *Pearson v Dublin Corp* [1907] A.C. 351); *secus*, of a body which had private gain for one of its substantial objects, though executing statutory powers, e.g. a railway company or a harbour board (*Att-Gen v Margate Pier Co* [1900] 1 Ch. 749; see as to that case per Williams L.J. *Ambler v Bradford* [1902] 2 Ch. 585). So, a public authority was exercising such a public duty when authorising the driver over a road as an assertion of its being a HIGHWAY (*Greenwell v Howell* [1901] 1 Q.B. 535). See PURSUANCE.

But the Public Authorities Protection Act 1893 only came into operation when there was some act done "in pursuance, or execution or intended execution", of a statutory or other public duty or authority, or as regards some alleged "neglect or default" therein (s.1); that "certainly does not mean that every act done by a corporation is to be treated as an act done in pursuance of a public duty or authority" (per Buckley J., *National Telephone Co v Kingson-upon-Hull*, 89 L.T. 291). The things contemplated by the Act were those which related to the public functions of the public authority, and did not compromise the various matters of private detail relating to individuals which were incident to every business, e.g. the construction, or revocation, of a contract relating to telephones (*National Telephone Co*), or the breach of a contract for, e.g. the erection of buildings (*Sharpington v Fulham* [1904] 2 Ch. 449); or an accident due to the alleged negligent driving of a motor car in which officials of a borough council were riding (see *Clarke v St Helens BC*, 85 L.J.K.B. 17); or an accident caused by an ambulance belonging to an ambulance association incorporated by Royal Charter (see *Ayr v St. Andrew's Ambulance Association* [1918] S.C. 158). See further per Williams L.J., *Lyles v Southend-on-Sea*, above. But, semble, the Act included a medical practitioner giving to the proper medical officer of health the statutory notification that a private patient was suffering from an infectious disease (*Salisbury v Gould*, 68 J.P. 158). See also *Bradford Corp v Myers* [1916] A.C. 242, 247.

The duty to prosecute for an offence was not a "public duty" within s.1(a) of the Act: see *Hartin v London CC*, 141 L.T. 120.

A harbour board who were empowered to carry on the business of wharfingers and warehousemen did not thereby cease to be a public authority acting in pursuance of a public duty (*Firestone Tire and Rubber Co (SS) v Singapore Harbour Board* [1952] A.C. 452).

Negotiations for settlement, causing the time for bringing an action to run out, did not estop the authority from setting up the Act: see *Hewlett v London CC*, 24 T.L.R. 331.

An agreement by a local authority to make up the pay which their employees received whilst serving in the Forces to the employees' civilian pay was not undertaken as a "public duty" within the Limitation Act 1939 (c.21) s.21(1) (*Turburville v West Ham Corp* [1950] 2 K.B. 208).

See EXECUTION OF STATUTORY POWERS; PUBLIC OFFICER.

See PUBLIC OFFICER.

PUBLIC EMERGENCY. Article 15 of the European Convention on Human Rights permits derogation from the right to liberty where there is a public emergency threatening the life of a nation. An emergency can exist even if there is no imminent threat of a terrorist attack where there is an intention and capacity to carry out serious terrorist violence (*A. v Home Secretary* [2003] 2 W.L.R. 564, CA).

PUBLIC EMPLOYMENT. See PUBLIC TRADE OR BUSINESS.

PUBLIC ENDOWMENT. See ENDOWMENT; PRIVATE ENDOWMENT.

PUBLIC ENTERTAINMENT. A place of public entertainment is one open to members of the public without discrimination who desire to be entertained and where means of entertainment are provided. It includes a fun fair and excludes a public tennis court (*Allen v Emmerson* [1944] 1 All E.R. 344).

Dancing at a wedding is not "public entertainment" such as is forbidden by the Sunday Observance Act 1780 (c.49) s.1 (*Roe v Harrogate Justices*, 64 L.G.R. 465).

An "acid house" party open to members of two clubs who had bought tickets in advance was a "public entertainment" within the meaning of the Local Government (Miscellaneous Provisions) Act 1982 (c.30) s.1 (*Lunn v Colston-Hayter* [1991] Crim. L.R. 467).

"Entertainment... for a public or special occasion": see ENTERTAINMENT.

See ENTERTAINMENT; PUBLIC BALL; PUBLIC DANCING; PUBLIC SINGING.

PUBLIC EXPENDITURE. "The question that lies at the heart of this appeal is how the words 'public expenditure' should be interpreted. In relation to local authorities, do they mean expenditure incurred by local authorities in discharging their functions under the Education Acts as defined in s.573 of the 1996 Act ('education functions') (the narrow meaning); or do they mean expenditure incurred by any public authority as a result of the discharge by the local authority of the education functions (the wider meaning)? There is also a possible intermediate meaning, namely that 'public expenditure' means expenditure incurred by a local authority in the discharge of any of its functions (including, but not limited to, education functions). Neither party contends for this intermediate meaning. In my view, they are right not to do so.... In my view, the correct meaning of the words 'public expenditure' in s.9 is expenditure incurred by a public body, as opposed to 'private expenditure' (ie expenditure incurred by a private body). There are three linguistic points to be made. First, this interpretation accords with the natural and ordinary meaning of the words. If it had been intended to limit the expenditure referred to in s.9 to expenditure incurred by the Secretary of State or local authorities in the exercise of education functions, the

section could and would have said so. Instead, Parliament chose the general words ‘public expenditure’. Secondly, if the public expenditure were limited to expenditure incurred by the Secretary of State or local authorities in the discharge of their education functions, the word ‘public’ would have been unnecessary. The Secretary of State and the local authorities are public bodies and expenditure incurred by them in discharging these functions is bound to be ‘public’ rather than ‘private’ expenditure. The word serves the important purpose of distinguishing the expenditure from private expenditure. Thirdly, the language of para.3(3) of Schedule 27 should be contrasted with that of s.9. Para.3(3) requires the local authority to specify the name of the school preferred by the parent unless the attendance of the child at the school would be incompatible *inter alia* with ‘the efficient use of resources’. As we have seen, this phrase has been interpreted as referring to the resources of the LEA (now the local authority) and no other authority. In s.9 Parliament could have used the words ‘so far as that is compatible with the . . . avoidance of the inefficient use of resources’. If it had done so, it would have been clear (in the light of the authorities on para.3(3)) that the relevant expenditure was that incurred in the discharge of education functions and no other. I accept, of course, that Schedule 27 post-dated the predecessor to s.9. But the contrast in language is nevertheless striking. In enacting para.3(3), Parliament did not seek to reproduce the language of s.9. It follows that a natural reading of s.9 clearly supports the wider interpretation.” (*Haining v Warrington Borough Council* [2014] EWCA Civ 398.)

PUBLIC FIREWORKS DISPLAY. Stat. Def., Fireworks Act 2003 (c.22) s.6(5).

PUBLIC FUNCTION. Stat. Def., s.4(4) of the Electronic Communications Act 2000 (c.7) (“includes any function conferred by or in accordance with any provision contained in or made under any enactment or Community legislation”); s.349(5) of the Financial Services and Markets Act 2000 (c.8); Civil Contingencies Act 2004 (c.36) s.31.

Stat. Def., Equality Act 2010 ss.31, 150.

See PUBLIC AUTHORITY.

PUBLIC FUNDS. See FUNDS; GOVERNMENT SECURITIES; PUBLIC MONEY; PUBLIC-PAROCHIAL FUNDS; PUBLIC SECURITIES.

PUBLIC GARDEN. See PUBLIC PARK.

PUBLIC GOOD. “Conducive to the public good” (Immigration Act 1971 (c.77) s.3(5)(b)). It could not be claimed that the exclusion of a returning resident, who had originally obtained leave to enter the United Kingdom by deception, but had since done nothing to warrant deportation, was “conducive to the public good” (*R. v Immigration Appeal Tribunal, Ex p. Patel* [1988] 2 W.L.R. 1165). The deportation of a person after five drug-related convictions was upheld on the basis of it being “conducive to the public good”, notwithstanding that the Parole Board on releasing him had made no recommendation that he should be deported (*R. v Secretary of State for the Home Department, Ex p. Anderson* [1991] C.O.D. 38).

See PUBLIC; BENEFIT; GOOD.

PUBLIC HEALTH SERVICES. Stat. Def., Health and Social Care Act 2012 s.234.

PUBLIC HIGHWAY. Where the access to a road at either end has become impossible by reason of ways leading up to it having been lawfully stopped, such road ceases to be a “public highway” (*Bailey v Jamieson*, 1 C.P.D. 329); such a case forms

PUBLIC

an exception to what Byles J. said (*Dawes v Hawkins*, 29 L.J.C.P. 347), it is “an established maxim, once a highway always a highway”, on which maxim see *Harvey v Truro* [1903] 2 Ch. 638.

A protection in a private railway Act for persons using a public highway over a level crossing does not extend to the driver of a train (*Knapp v Railway v Executive* [1949] 2 All E.R. 508).

Stat. Def., Road Traffic Act 1972 (c.20) s.20(5).

“Turnpike road or public highway”: see TURNPIKE ROAD.

See PUBLIC ROAD; THOROUGHFARE; PLACE.

PUBLIC HOLIDAY. Stat. Def., Arbitration Act 1996 (c.23) s.78(5).

Stat. Def., s.125(1) of the Postal Services Act 2000 (c.26).

PUBLIC HOSPITAL. “Public hospital, infirmary, or other medical institution”, proviso to the Coroners Act 1887 (c.71) s.22, included a children’s and general hospital, supported by voluntary contributions, and founded for the free admission and relief of patients within a defined area upon production of a governor’s letter, and of patients outside that area upon payment of a small weekly sum (*Horner v Lewis*, 67 L.J.Q.B. 524). *Horner v Lewis* was approved in *Ormskirk v Chorlton* [1903] 2 K.B. 498, cited HOSPITAL; *Tendring Union v Woolwich* [1923] 1 K.B. 121. Cp. PUBLIC CHARITY.

PUBLIC HOUSE. Obtaining and using an “off” licence for the sale of beer is not a breach of a covenant not to use the premises “as a public-house for the sale of beer” (*Pease v Coates*, L.R. 2 Eq. 688; see further *Fielden or Feilden v Slater*, L.R. 7 Eq. 523; *Devonshire v Simmons*, 11 T.L.R. 52). So, a private club, in which liquors are only sold to members, is not a “public-house”, nor is it used “for the sale of liquors” within a restrictive covenant (*Ranken v Hunt*, 96 L.T. 413). See further, as to covenant against a public-house, RETAIL. Cp. *Re Cullen and Rial* [1904] 1 I.R. 206, cited SPIRIT GROCER.

As to the duty of a vendor, as regards the licence, on the sale of a public-house, see *Claydon v Green*, L.R. 3 C.P. 511; *Day v Luhke*, L.R. 5 Eq. 336; *Cowles v Gale*, 7 Ch. 12; *Tadcaster Brewery Co v Wilson* [1897] 1 Ch. 705, cited AFFECTED.

“Public-house”, used sometimes to be employed in the sense of a toll-house (*R. v St. Andrew the Less*, 10 B. & C. 742).

A public house which provided a dance floor, disc jockey and other “theme” activities ancillary to the main purpose of selling intoxicating liquor, did not thereby cease to be a “public house” within the terms of a condition in a change of use planning permission (*Shepway DC and South Coast Leisure* (1988) 3 P.A.D. 178).

See ALEHOUSE; BEER-HOUSE; FREE PUBLIC HOUSE; HOTEL; SHOP; OPEN.

PUBLIC IMPORTANCE. See EXCEPTIONAL; GREAT GENERAL OR PUBLIC IMPORTANCE; cp. PUBLIC INTEREST.

PUBLIC INTEREST. A matter of public or general interest “does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected” (per Campbell C.J., *R. v Bedfordshire*, 24 L.J.Q.B. 84). See further *Seymour v Butterworth*, 3 F. & F. 372; *Cox v Feeney*, 4 F. & F. 13; *Strauss v France*, 4 F. & F. 1113; *Hunter v Sharp*, 4 F. & F. 983; *R. v Labouchere*, 14 Cox C.C. 419; *South Hetton Co v North Eastern News Association* [1894] 1 Q.B. 133. See also per Williams L.J., *Joynt v Cycle Trade*

Publishing Co [1904] 2 K.B. 296; *Thomas v Bradbury, Agnew & Co* [1906] 2 K.B. 627, cited FAIR COMMENT; *Mangena v Wright*, 53 S.J. 485; *Sharman v Merritt and Hatcher*, 32 T.L.R. 360.

“One feature . . . of the public interest is that justice should always be done and should be seen to be done”: per Morris L.J., *Ellis v Home Office* [1953] 2 Q.B. 135.

“Interests of the public” (Licensing (Consolidation) Act 1910 (c.24) s.14). A condition imposed by justices on a licence might have been in the interests of the public although it was not in the interests of every part of the public (*R. v Sussex Confirming Authority*, 157 L.T. 590).

Cases where in the public interest a minister of the Crown is justified in objecting to the production of documents are where disclosure would be injurious to national defence or to good diplomatic relations or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service (*Duncan v Cammell Laird & Co* [1942] A.C. 624 at 642).

“ . . . when considering the public interest and what might be ‘injurious to the public interest’ within the proviso to s.28(1) of the Crown Proceedings Act 1947 (c.44), it seems to me that it is to be remembered that one feature and one facet of the public interest is that justice should always be done and should be seen to be done” (*Ellis v Home Office* [1953] 2 Q.B. 135).

“Public interest” (Telegraph (Construction) Act 1916 (c.40) s.1). For the refusal of a landowner to permit telephone lines to pass over his land to be contrary to “public interest” it is not necessary to show that a district or large number of persons would be thereby deprived of the telephone (*Postmaster-General v Pearce (Note)* [1968] 2 Q.B. 463). It has in fact been held contrary to “public interest” to deprive two farmers in a remote area (*Cartwright v Post Office* [1969 2 Q.B. 62]).

Stat. Def., Identity Cards Act 2006 s.1(4).

See FAIR COMMENT; GENERAL INTEREST; INTERESTED IN; PUBLIC; PUBLIC BENEFIT.

PUBLIC ISSUE. See PROSPECTUS.

PUBLIC LIBRARY. See Public Libraries and Museums Act 1964 (c.75).

See LIBRARY; PUBLIC MUSEUM.

PUBLIC MARKET. A “public market” (Hawkers Act 1810 (c.41) s.5) meant “a legally established” market by grant from the Crown, not a merely de facto market (*Benjamin v Andrews*, 5 C.B.N.S.299).

“Persons attending any public market, or following any lawful trade or calling” (Licensing Act 1910 (c.24) s.55): see *R. v Johnson* [1905] 2 K.B. 59.

(Licensing Act 1953 (c.46) s.100(1)(b).) A public market in respect of which a general order of exemption could be made under the section did not, in the ordinary sense of the word, include gatherings of farmers and commercial travellers in the public house itself (*R. v Bungay Justices, Ex p. Long*, 123 J.P. 315).

PUBLIC MEETING. A sermon delivered in the usual course in a place of religious worship, was not at a “public meeting” within s.4 of the Law of Libel Amendment Act 1888 (c.64), and “a fair and accurate report” thereof was not entitled to the protection of the section (per Wills J., *Chaloner v Lansdown*, 10 T.L.R. 290).

As to whether a meeting of a students’ federation is a public meeting within Defamation Act 1952 (c.66) s.7 Sch. para.9, see *Khan v Ahmed* [1957] 2 Q.B. 149.

A “lawful public meeting” within the Public Meeting Act 1908 (c.66) s.1(1) may be held on a highway: see *Burden v Rigler* [1911] 1 K.B. 337.

PUBLIC

In the context of s.7 of the Defamation Act (Northern Ireland) 1955, which grants qualified privilege to newspaper reports of public meetings subject to conditions, a meeting is public if its organisers open it to the public or, by issuing a general invitation to the press, manifest an intention to communicate the proceedings to a wider public. A meeting does not lose its public character because admission is subject to some restriction (as in the case of a press conference) (*McCartan Turkington Breen v Times Newspapers Ltd* [2000] 3 W.L.R. 1670, HL).

“Public meeting”, “public place”, “public procession”: Stat. Def., Public Order Act 1936 (c.6) s.9(1).

PUBLIC MISCHIEF. Conspiracy to effect a public mischief, in the sense of an agreement to do an act which although not unlawful in itself was extremely injurious to the public, is not (or is no longer) an offence known to the law (unless it amounts to an unlawful conspiracy) (*DPP v Withers* [1974] 3 All E.R. 984, HL).

PUBLIC MUSEUM. Stat. Def., Mortmain and Charitable Uses Act 1888 (c.42) s.6(4)(iv).

See LIBRARY; PUBLIC LIBRARY.

PUBLIC MUSIC. The music at a skating rink is “public music”, within Disorderly Houses Act 1751 (c.36) s.2 (*R. v Tucker*, 2 Q.B.D. 417, cited PUBLIC DANCING).

“Public dancing or music”: see PUBLIC DANCING.

See PUBLIC BALL.

PUBLIC NATURE. “Of a public nature” (Finance Act 1956 (c.54) Sch.2 para.6(a); now Income and Corporation Taxes Act 1970 (c.10) s.184(3)(a)). Prima facie the duties of any civil servant, however, junior, are “of a public nature” within the meaning of this section (*Graham v White* [1972] 1 W.L.R. 874).

A charitable foundation providing accommodation which was used by a local authority for the provision of assistance under s.21 of the National Assistance Act 1948 was not performing functions of a public nature for the purpose of s.6(3)(b) of the Human Rights Act 1998. Mere size of an organisation would not turn it into a public authority, nor would the mere fact that its activities were largely publicly funded through a local authority (*R. (Heather) v Leonard Cheshire Foundation* [2002] 2 All E.R. 936, CA (distinguishing *Poplar v Donoghue*)).

See also *Functions of a Public Nature under the Human Rights Act* [2004] Public Law pp.329–351.

See PUBLIC AUTHORITY; PUBLIC BOOK; PUBLIC DOCUMENT; PUBLIC PURPOSE; NATURE; RECORD.

PUBLIC NOTICE. A “public notice or advertisement” (Sch. to Medicines Stamp Act 1812 (c.150)) was not confined to an announcement in a newspaper; the phrase included a statement in a trade price list (*Smith v Mason* [1894] 2 Q.B. 363).

Publications in two newspapers circulating in the area is enough to satisfy the requirement for a “public notice” under Sch.1 para.11(2) of the Acquisition of Land (Authorisation Procedure) Act 1946 (c.49) (*McMeecham v Secretary of State for the Environment* [1974] J.P.L. 411).

See PROCLAMATION.

PUBLIC NUISANCE. “Any nuisance is ‘public’ which materially affects the reasonable comfort and convenience . . . of a class of Her Majesty’s subjects It is not necessary, in my judgment, to prove that every member of the class has been

injuriously affected; it is sufficient to show that a representative cross-section of the class has been so affected" (per Romer L.J. in *Att-Gen v PYA Quarries* [1957] 2 Q.B. 169).

To establish the offence of public nuisance it is necessary to show that a substantial section of the public has been affected, as opposed to just a few individuals (*R. v Madden* [1975] 1 W.L.R. 1379).

The fact that, over a period of more than 30 years, cricket balls had occasionally been hit into the highway from a cricket ground was not sufficient to constitute the playing of cricket on that ground a "public nuisance" (*Bolton v Stone* [1951] A.C. 850).

"It was a public nuisance to discharge oil into the sea in such circumstances that it was likely to be carried on to the shores and beaches" (per Denning L.J., in the Court of Appeal in *Southport Corp v Esso Petroleum Co* [1954] 2 Q.B. 182). "What was done may possibly have constituted a public nuisance... But... it seems to be conceded that it would be a defence to such claim to show that the discharge of oil was reasonably necessary to prevent loss of life in the ship's crew unless the appellants' own carelessness had brought about the danger" (per Lord Radcliffe in the House of Lords in *Esso Petroleum Co v Southport Corp* [1956] A.C. 218).

For confirmation of the common law definition of the offence of public nuisance, see *R. v Goldstein* [2004] 2 All E.R. 589, CA. But see now [2005] UKHL 63.

The nature and parameters of the offence of public nuisance are also discussed in *R v Rimmington* [2005] UKHL 63.

See further COMMON NUISANCE; NUISANCE.

PUBLIC OCCUPATION. See PUBLIC TRADE OR BUSINESS.

PUBLIC OFFICE. An employ in an incorporated company, such as the Bank of Scotland, was a "public office, or employment of profit", within Sch.E to the Income Tax Acts 1842 (c.35) and 1853 (c.91) (*Tennant v Smith* [1892] A.C. 150); so, of a national schoolmaster, "because the salary is paid by persons whose position as managers of the school is recognised by Act of Parliament, and is paid out of sums of money principally contributed from the taxes of the country in order that the persons to whom it is paid may discharge a duty which is recognised as part of the PUBLIC SERVICE" (per Pollock B., *Bowers v Harding* [1891] 1 Q.B. 560).

A bursar of an Oxford college, who was not on the foundation and received a salary, held such a "public office" (*Langston v Glasson* [1891] 1 Q.B. 567). A person assessable on a "public office, or employment", had to be assessed under Sch.E, and could not be assessed under Case 2 Sch.D. as on an "employment or VOCATION" (per Lord Watson, *Tennant v Smith*, above).

In *Pickles v Foster* [1913] 1 K.B. 174, it was held that under r.3 s.146 of the Income Tax Act 1842 (c.35) the office or employment of profit had to be exercised within the United Kingdom, and did not include the case of a person employed by an English company who exercised his functions entirely abroad.

As regards the Income Tax Act 1918 (c.40) Sch.E, see *Ricketts v Colquhoun*, 95 L.J.K.B. 82. See also *Great Western Railway v Bater* [1922] 2 A.C. 1, cited OFFICE, in which case the question was fully discussed, and it was held that a clerk employed by a railway company did not hold a "public office".

The office of a director of an English private company was a "public office in the United Kingdom" within the meaning of Sch.E. r.6, whether the director resided in England or not. The office of director was situate where the company was, and in the

PUBLIC

above-mentioned rule the expression “public office” included the office of a director of any company incorporated under the Companies Act 1929 (c.23) (*MacMillan v Guest* [1942] A.C. 561).

A foreign journalist in England whose salary was payable abroad was not within the rule (*Bray v Colenbrander* [1952] 2 T.L.R. 499).

“Payable . . . by any public office” (Income Tax Act 1918 (c.40) Sch.3 r.4(1)): on the true construction of the War Damage Act 1943 (c.21), the War Damage Commission is a “public office” within the meaning of the rule (*IRC v Bew Estates*; *IRC v Westbury* [1956] Ch. 407).

A commission in the Territorial Forces was held to be a “public office” for the purposes of a condition in a will providing for forfeiture on undertaking any “public office”. The condition was held to be contrary to public policy (*Re Edgar*, 83 S.J. 154).

“Public annual office” (Public Accounts Act 1692 (c.11) s.6) included the office of assessor and collector of land or assessed taxes, or of a churchwarden (*R. v Anderson*, 9 Q.B. 663, cited *SERVED*); so, semble, of a clerk to Land Tax Commissioners (*R. v St. Martin-in-the-Fields Commissioners*, 1 T.R.146).

Semble, the mastership of a city company is a public office of trust (*R. v Neal*, Cunn. 267).

Stat. Def., National Parks and Access to the Country-side Act 1949 (c.97) s.11A(4) inserted by Environment Act 1995 (c.25) s.62(1).

Stat. Def., s.85(3) of the Countryside and Rights of Way Act 2000 (c.37).

Corrupt and Illegal Practices Prevention Act 1883 (c.51) s.64; Public Bodies Corrupt Practices Act 1889 (c.69) s.7; Superannuation Act 1965 (c.74) s.39(1); Representation of the People Act 1949 (c.68) s.163; Representation of the People Act 1983 (c.2) s.185.

“We do not see remuneration as an indispensable requirement either for the holding of a public office, or for liability to prosecution for the offence of misconduct in a public office. We say that because firstly, nothing in authority so confines the offence. To the contrary, the observations both in *Bembridge* and *Whitaker* point the other way. So far as concerns *Henly*, we see it as a very different case in a very different context, and the point was not in issue. Secondly, as a matter of logic, we cannot see why remuneration should be required as a condition for holding public office or liability to prosecution. Thirdly, if regard is had to the duties placed on a visitor, or member of an Independent Monitoring Board, they are indeed of serious moment. Not least, the visitor is, as provided by the Prison Act and the rules to which we have referred, entitled to visit any place in a prison and to interview any prisoner. It seems most improbable that a person would be given such an entitlement if not the holder of a public office, or otherwise, under some suitable contractual arrangement with the prison. Fourthly, in those circumstances we cannot see why, if there is a serious breach on the part of the office holder, they should not be liable to prosecution simply on the ground that they were not remunerated.” (*R. v Belton* [2010] EWCA Crim 2857.)

Stat. Def., Equality Act 2010 ss.50, 52.

“Public civil office”: Stat. Def., Pensions Commutation Act 1871 (c.36) s.2.

See OFFICE; PUBLIC OFFICER; PUBLIC TRADE OR BUSINESS; WHOLLY.

PUBLIC OFFICER. “Every one who is appointed to discharge a public duty, and receives a compensation in whatever shape, whether from the Crown or otherwise, is constituted a public officer”, e.g. a bishop, clergyman, or lord of a manor, or a corporation with a grant of lands which grant imposes a public duty, and as such is

liable to an action for injury to an individual arising from abuse of the office, either by act of omission or commission (*Henly v Lyme*, 5 Bing. 107, 108).

“A public officer is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public” (per Lawrence J. in *R. v Whitaker* [1914] 3 K.B. 1283).

In *Re Mirams* [1891] 1 Q.B. 594 (cited also *INCOME*); Cave J. held that a charge on the stipend of a workhouse chaplain was not against public policy as being on the emoluments of a public officer; he said “to make the office a public office the pay must come out of national, and not out of local, funds—the office must be public in the strict sense of that term. It is not enough that the due discharge of the duties should be for the public benefit in a secondary and remote sense”; he also said, “It has never been held that a clergyman having the cure of souls was a public officer”: see hereon *Henly v Lyme*, above.

(Solicitors Act 1932 (c.37) s.47(3).) “Public officer” meant officer in a public department and did not, therefore, include a clerk employed by a local authority (*Beeston and Stapleford Urban DC v Smith* [1949] 1 K.B. 656).

An auditor appointed to hold office in a company was a “public officer” within the meaning of ss.83 and 84 of the Larceny Act 1861 (c.96) (*R. v Shacter* [1960] 2 Q.B. 252).

Lloyds (insurance society) is not a public officer for the purposes of the tort of misfeasance in public office (*Society of Lloyds v Henderson* [2007] EWCA Civ 930).

See OFFICER; PUBLIC OFFICE.

PUBLIC OFFICIAL. See FOREIGN PUBLIC OFFICIAL.

PUBLIC OPEN SPACE. Stat. Def., Forestry Act 1967 (c.10) s.9(6); Agriculture Act 1967 (c.22) s.52(15); Countryside Act 1968 (c.41) s.24(4).

PUBLIC PARK. For the purpose of the Mortmain and Charitable Uses Act 1888 (c.42), “‘public park’ includes any park, garden, or other land, dedicated or to be dedicated to the recreation of the PUBLIC” (s.6(4)(i)).

See PARK.

PUBLIC PASSAGE. The bridges over the Regent’s Canal, London, might very well answer the description of a “public passage or place”, but they were not “built upon, or in building” within the Paving Act 1815 (c. xxv) s.3 (*Arnell v Regent’s Canal Co*, 14 C.B. 564, cited *PASSAGE*). See PUBLIC BUILDING; PUBLIC ROAD.

PUBLIC PASSENGER TRANSPORT SERVICES. Stat. Def., “means all those services on which members of the public rely for getting from place to place, when not relying on private facilities of their own, including school transport but not including—

- (a) services provided under permits under s.19 of the Transport Act 1985 (c. 67) (permits in relation to use of buses by educational and other bodies) other than services provided wholly or mainly to meet the needs of members of the public who are elderly or disabled;
- (b) excursions or tours” (Transport (Wales) Act 2006 s.7(5)).

PUBLIC PASSENGER VEHICLE. Stat. Def., Road Traffic Act 1972 (c.20) s.82.

PUBLIC PATH. Stat. Def., National Parks and Access to the Countryside Act 1949 (c.97) s.27; Wildlife and Countryside Act 1981 (c.69) s.66.

PUBLIC PERFORMANCE. Stat. Def., Theatres Act 1968 (c.54) s.18.

PUBLIC PLACE. A public place is a place to which the public can and do have access; it doesn't matter whether they come at the invitation of the occupier or merely with his permission, or whether some payment or the performance of some formality is required before access can be had (*R. v Kane* [1965] 1 All E.R. 705).

In the Vagrancy Act 1824 (c.83) s.4, it is *inter alia* declared an act of vagrancy to play or bet "in any street, road, highway, or other open and public place", and in the amplified version of that enactment contained in Vagrant Act Amendment Act 1873 (c.38) s.3, the words defining the locality of the offence are identical with those just quoted; held, that a railway carriage in transit on a railway is an "open and public place" within those sections (*Langrish v Archer*, 10 Q.B.D. 44); but the conviction must show that the carriage was in actual transit at the time of the commission of the offence (*Ex p. Freestone*, 25 L.J.M.C. 121). It has been held by a police magistrate that the inside of a four-wheeled cab, which cab was standing on a public rank and used by three waiting cabmen for a gamble with dice, was an "open and public place" within the section last cited (*R. v Weller*, *The Times*, April 18, 1894).

By Vagrancy Act 1824 (c.83) s.4, already cited, it is an act of vagrancy to indecently expose the person, "in any street road or public highway, or in the view thereof, or in any place of public resort with intent to insult a female", or for a suspected person or reputed thief to frequent any river, etc. "or any place of public resort". Within these words a private house in which a sale by public auction is being held is a "place of public resort" (*Sewell v Taylor*, 7 C.B.N.S. 160); so is the platform of a railway station (*Ex p. Davis*, 26 L.J.M.C. 178); and so (probably) is the inside of an omnibus (*R. v Holmes*, 22 L.J.M.C. 122); or a public urinal (*R. v Harris*, L.R. 1 C.C.R. 282); or the roof of a house (*R. v Thallman*, below); or, indeed, any place where a number of persons may be affected by the criminal act (*R. v Thallman*, 33 L.J.M.C. 58; *R. v Saunders*, 1 Q.B.D. 15; *R. v Wellard*, 14 Q.B.D. 63; STEPH. CR. (9TH EDN), 198); though, *semble*, even a public highway is not necessarily a "place of public resort" (*Re Timson*, L.R. 5 Ex. 257, on which see *Clark v Regina*, 14 Q.B.D. 99, where Hawkins J. refers to the variation of language of s.4, made by s.15 of the Prevention of Crimes Act 1871 (c.112)). A place does not cease to be a place of public resort because the public has to pay to go there or can be refused admission by the occupier (*Glynn v Simmonds* [1952] W.N. 289).

A curious contrast to *Sewell v Taylor* (above), and as showing how exactly similar words are controlled into a different meaning by the context, was furnished by Theatres Act 1843 (c.68) s.2. It was thereby provided that it should not be lawful "to have or keep any house or other place of public resort" for the public performance of stage plays without a licence, and it was held that a booth used by strolling players was not within those words (*Davys v Douglas*, 28 L.J.M.C. 193. See also *Fredericks v Howie*, 31 L.J.M.C. 249). It will be observed that in the section just mentioned the phrase "place of public resort" occurred in conjunction with the word "house", and that both were controlled by the verbs "have or keep". Accordingly the kind of "place" intended was one of a permanent character. But in the very same Act (s.11) it was provided that no person should, for hire, act "in any place, not being a patent theatre or duly licensed as a theatre"; and the court held (apparently rejecting the force of the word "place" being found in conjunction with "patent theatre") that a booth used by strolling players was within s.11 (*Fredericks v Payne*, 32 L.J.M.C. 14; *Tarling v Fredericks*, 28 L.T. 814). The curious consequence was reached that whilst it was not

unlawful to have or keep an unlicensed moveable booth in which, for hire, stage plays might be acted, yet it was unlawful for any one so to act therein. Cp. *Powell v Kempton Park Co*, below.

A place to which the public resort in fact, even though not of right, is a “place of public resort” within an authorised municipal by-law for the prevention of betting (*Kitson v Ashe* [1899] 1 Q.B. 425).

“House, shop, room, or OTHER place of public resort” (Town Police Clauses Act 1847 (c.89) s.35) included a licensed alehouse (*Cole v Coulton*, 29 L.J.M.C. 125).

“Open place to which the public have or are permitted to have access” (Vagrant Act Amendment Act 1873 (c.38) s.3): see *Turnbull v Appleton*, 45 J.P. 469; *Hirst v Molesbury*, L.R. 6 Q.B. 130.

In the phrase “at some standing or place appointed” (London Hackney Carriages Act 1843 (c.86) s.33) “place” meant “public street or road” (*Skinner v Usher*, L.R. 7 Q.B. 423). See also *Benjamin v Cooper* [1951] 2 T.L.R. 906 (the forecourt of a railway station was a private place). See PUBLIC PLACE.

An inn skittle-alley, used for the sale of manufactured goods, was an “open place” within a Local Market Act prohibition against selling outside a market, and was not a “shop” within an exception thereto (*Hooper v Kenshole*, 2 Q.B.D. 127). See SHOP.

For the purposes of the law of affray, a hall at which a football club was holding a dance to which the public could obtain admission on payment was a “public place” (*R. v Morris*, 47 Cr.App.R. 202) and so was the public bar of a public house (*R. v Clark*, 47 Cr.App.R. 203). An essential of an affray is that it must be in a public place or on a public road (*R. v Mapstone* [1963] 3 All E.R. 930 n).

(Public Order Act 1936 (c.6) s.5.) Unpleasant exchanges between neighbours are not abusive or insulting words, etc. in a public place (*Wilson v Skeock*, 65 T.L.R. 418).

The platform of a railway station is not an open space and is not therefore a public place within the definition contained in s.9 of the Public Order Act 1936 (c.6) as substituted by Criminal Justice Act 1972 (c.71) s.33 (*Cooper v Shield* [1971] 2 Q.B. 334). The whole of a football ground is a “public place” including the pitch (*Cawley v Frost* [1976] 1 W.L.R. 1207). The fact that the public can obtain access to a private house as visitors through the front garden does not make the garden a “public place” for the purposes of this section; it is not sufficient that behaviour in such a place can be heard or seen by people in a public place unless it is also aimed at them (*R. v Edwards*; *R. v Roberts* (1978) 67 Cr.App.R. 228). A public house with open doors inviting the public to enter is a “public place” within the meaning of this section (*Lawrenson v Oxford* [1982] Crim. L.R. 185). But the car park of a shop is not (*Marsh v Arscott* (1982) 75 Cr.App. Ref. 211).

“Public place” (Prevention of Crime 1953 (c.14) s.1(1)). The third-floor landing of a block of council flats, which was shared between the accused’s flat and one other, was held not to be “public place” within the meaning of this section (*R. v Heffey* [1981] Crim. L.R. 111). But the upper landing of a block of flats on a housing estate belonging to the local authority was capable of being a “public place” within the meaning of this section (*Knox v Anderton* (1982) 76 Cr.App.R. 156).

“Public place” (Firearms Act 1968 (c.27) s.19). The space behind the counter of a shop can be a “public place” within the meaning of this section (*Anderson v Miller* 1976) 64 Cr.App.R. 209).

(Street Betting Act 1906 (c.43) s.1(4).) A public-house was not a “public place” (*Brannan v Peek* [1948] 1 K.B. 68).

A shed on a quay having large openings in the side without gates or doors to which the public had free access was held to be a public place within the meaning of the Street Betting Act 1906: see *Campbell v Kerr*, 1912 S.C. 10.

The declaration in a Private Act that a place of usual resort is a “public place” does not imply a dedication to the public of anything except the surface; and the local authority is not entitled to erect public conveniences under the surface of such “public place” (*Tunbridge Wells v Baird* [1896] A.C. 434). Cp. *South Eastern Railway v National Telephone Co*, 77 L.J. Ch. 682, cited ACROSS. See further VEST.

“Street or public place”: see *Howard v Daniels*, 93 L.T. 669, cited STREET.

“Public place” (Road Traffic Act 1972 (c.20) ss.5, 6; now Road Traffic Act 1988 (c.52) ss.4, 5). An off the road parking bay with no physical barrier between it and the road was a “public place” for the purposes of this section (*Capell v DPP* (1991) 155 J.P.N. 139). A caravan park where entry could only be obtained by those who had registered and were using or visiting the site was nevertheless held to be a public place (*DPP v Vivier* [1991] R.T.R. 205). As was a multi-storey car park without a barrier (*Bowman v DPP* [1991] R.T.R. 263). The lane leading from the berth of a cross-Channel ferry through the immigration and docking terminal with access excluded to all but passengers was nevertheless a “public place” for the purposes of these sections, and accordingly a driver breathalyzed on that lane was properly convicted (*DPP v Coulman* [1993] R.T.R. 230).

(Road Traffic Act 1988 (c.52) ss.2 and 3.) School grounds, which were used as a leisure park outside school hours were a public place, where members of the public might be expected to be found, *Roger v Normand*, 1994 S.C.C.R. 861.

“Public place” (Criminal Justice Act 1967 (c.80) s.91). The landing of a block of flats that was secure and locked, accessible only with a key or by means of an entry phone security system, was not a “public place” for the purposes of this section (*Williams (Richard) v DPP* (1992) 95 Cr.App.R. 415).

“Public place” (Dangerous Dogs Act 1991 (c.65) s.10(2)). A garden path is not a “public place” within the meaning of this section (*Fellowes v DPP* [1993] Crim. L.R. 523). A dangerous dog, as defined by s.1 of this Act, in a private car which was on a public highway was in a “public place” within the meaning of s.10(2) (*Bates v DPP* (1993) 157 J.P. 1004).

A private club’s car park was not a “public place”, if of such a size that it would not be generally regarded as a public place (*Havell v DPP* [1993] Crim. L.R. 621).

(Environmental Protection Act 1990 (c.43) s.87.) A telephone kiosk was not a “public place” within the meaning of the 1990 Act s.87(4) (*Felix v DPP*, *The Times*, May 5, 1998).

Land adjacent to areas where the public have access is not itself a “public place” for the purposes of s.139 of the Criminal Justice Act 1988 (c.33), despite the fact that harm could have been committed to the public from that place (*R. v Roberts* [2004] 1 W.L.R. 181, CA).

Stat. Def., Public Order Act 1986 (c.64) s.16; Criminal Justice Act 1988 (c.33) s.139; Prevention of Terrorism (Temporary Provisions) Act 1989 (c.4) s.3; “includes any highway and any other premises or place to which at the material time the public have or are permitted to have access (whether on payment or otherwise)” (Criminal Justice and Public Order Act 1994 (c.33) s.167(6)); Northern Ireland (Emergency Provisions) Act 1996 (c.22) s.58.

Stat. Def., Children and Young Persons Act 1933 (c.12) s.107(1); Public Health Act 1925 (c.71) s.26; Prevention of Crime Act 1953 (c.14) s.1(4); Air Guns and Shot Guns Act 1962 (c.49) s.4; Firearms Act 1968 (c.27) s.57(4); Criminal Justice Act 1972 (c.71) s.33; Indecent Displays Act 1981 (c.42) s.1.

Stat. Def., “means a place to which members of the public have or are permitted to have access, whether or not for payment” (s.121 of the Terrorism Act 2000); “means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission” (s.16(1) of the Criminal Justice and Police Act 2001 (c.16)).

Stat. Def., Anti-social Behaviour Act 2003 (c.38) s.36.

“19 The issue for the trial judge in addressing the submission of no case to answer for the appellant was simply whether there was sufficient evidence to entitle the jury to conclude that the locus where the crossbow was found was a public place as defined in s.47(4) of the Criminal Law (Consolidation) (Scotland) Act 1995. The trial judge referred in his report to *Normand v Donnelly*, cited above, and *Owens v Crowe* 1994 SCCR 310 which related to events in a discotheque. We did not find either to be of any particular assistance in answering that question in this case. The same applies to the unreported case of *William Templeton v HMA*, 26 August 2008, which came to the attention of the trial judge after he had rejected the submission. There it was held that a common stairway serving a number of flats, which could be entered because the lock to the external controlled entry door was broken, was not a public place since access was not by invitation or toleration. These cases all illustrate that whether the evidence satisfies the terms of the statute is very much a fact specific matter which depends upon the circumstances of each individual case.

“20 In our opinion the trial judge was entirely correct when he decided that there was a case to answer and in particular that the evidence entitled the jury to decide that the shop area was a place to which the public had or were permitted to have access. The layout and condition of the premises during business hours allowed free access to the shop area and indeed provided for access and exit by more than one route. The premises had all the appearance of being open for business. There was no evidence of any barrier, including the intervention of any of the staff, to prevent free access to the shop area. People who were apparently random callers entered the shop area without obstruction. All of that was entirely consistent with what happened when the police arrived to execute the search warrant. They simply drove through the gates, and then ran through the main entrance and the door to the shop area quite freely. The crossbow was openly visible. The general impression created was one of freedom of access to that area to anyone calling at the premises.” (*James (John) v HM Advocate* [2011] HCJAC 53.)

Stat. Def., “means—(a) a highway; or (b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; and for this purpose ‘place’ includes a place on a means of transport” (Violent Crime Reduction Act 2006 s.27).

Stat. Def., “means a place to which members of the public have or are permitted to have access, whether or not for payment” (Justice and Security (Northern Ireland) Act 2007 s.42).

Stat. Def., any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, Anti-social Behaviour, Crime and Policing Act 2014 s.74.

See STREET; PLY.

PUBLIC POLICY. "Is a very unruly horse, and when once you get astride of it you never know where it will carry you" (per Burrough J., *Richardson v Mellish*, 2 Bing. 252); this saying was adopted and approved by Esher M.R., *Cleaver v Mutual Reserve Association* [1892] 1 Q.B. 147. "Judges are more to be trusted as interpreters of the law than as expounders of what is called 'public policy'" (per Cave J., *Re Mirams* [1891] 1 Q.B. 594, cited PUBLIC OFFICER). See hereon *Egerton v Brownlow*, 4 H.L. Cas. 1; per Kekewich J., *Davies v Davies*, 36 Ch. D. 364; Matthews' *Restraint of Trade*, introductory Ch. See hereon per Kekewich J., *Re Hope-Johnstone* [1904] 1 Ch. 470, citing *H. v W.*, 3 K. & J. 382; *Westmeath v Salisbury*, 5 Bligh (N.S.) 339; *Westmeath v Westmeath*, Jac. 126; *Cartwright v Cartwright*, 22 L.J. Ch. 841; *Re Moore*, 39 Ch. D. 116, cited DURING; *Prince v Haworth* [1905] 2 K.B. 768; *Hyams v Stuart-King* [1908] 2 K.B. 696, cited GAMING CONTRACT; *Wilson v Carnley* [1908] 1 K.B. 729, and cases therein cited; *Dann v Curzon*, 55 S.J. 189; *Jeffrey & Co v Bamford* [1921] 2 K.B. 351; *Re Jacob Morris* [1943] N.S.W.S.R. 352. Cp. INTENTION; CHARGE OF FRAUD. But See PUBLIC.

A promise made between decrees nisi and absolute to marry after decree absolute is not contrary to public policy (*Fender v St. John-Mildmay* [1938] A.C. 1). "One cannot resist the tendency test . . . To avoid a contract it is not enough that it affords a motive to do wrong; it must surely be shown that such a contract generally affords a motive and that it is likely to be effective" (Lord Atkin [1938] A.C. at 12, 13).

A provision in a life policy that the insurers will pay in the event of the suicide of the assured while sane is void, at least as against the personal representatives of the assured. Semble, it would not be void as against an assignee for value of the policy (*Beresford v Royal Insurance Co* [1938] A.C. 586).

The doctrine avoiding a contract which in effect deprives a man of the means of supporting himself and his family affirmed (*King v Michael Faraday & Partners Ltd* [1939] 2 K.B. 753).

Two newspapers which ran "crossword competitions" found that the prizes were got by a swindle. An employee of one newspaper explained the swindle on an undertaking by the newspaper not to use the information against him or divulge it to a third party. Held, that the undertaking was contrary to public policy. "It may well be permissible for a person against whom frauds have been and are intended to be committed to give a promise of secrecy in order to obtain information relating to them which will enable him, by taking steps himself, to prevent the commission of future frauds. I do not, however, think that such a promise ought to be held to be valid where it extends to frauds committed and contemplated against others to whom the communication of the information obtained would be of use in preventing the commission of such frauds" (per Greene L.J., *Howard, v Odhams Press Ltd* [1938] 1 K.B. 1).

A condition in a will providing that an interest, which would otherwise have vested in a beneficiary on attaining twenty-one or marrying, should be forfeited if the beneficiary should at any time before attaining a vested interest be or become a Roman Catholic or not be openly or avowedly Protestant, was held void on the ground that it operated to interfere with a parent in the exercise of his parental duty as regards the religious instruction of his children. It was also held void for uncertainty (*Re Borwick* [1933] Ch. 657).

A gift by an English testator for the benefit of German soldiers disabled in the 1914–1918 war was held not contrary to public policy, but a valid charitable gift (*Re Robinson* [1931] 2 Ch. 122).

A gift to existing illegitimate children is not contrary to public policy, provided the children can be ascertained without an inquiry into their parentage (*Re Hyde* [1932] 1 Ch. 95).

A bequest to a person of an annuity while she should be married to her then present husband, and of the income of the whole estate if she should cease to be married to him, was held, on the facts, not intended to induce a separation of the spouses, and therefore to be valid (*Re Thompson*, 83 S.J. 317).

The rule of public policy which precludes a sane murderer from taking any benefit under his victim's will (see *Re Pollock* [1941] Ch. 219), precludes him also from taking any benefit from the trusts declared by statute of the residuary estate of his victim in case of intestacy. Whether in such a case the estate is distributable as if the murderer had predeceased the victim, or whether the murderer's share passes to the Crown as bona vacantia, quære (*Re Sigsworth* [1935] Ch. 89). A beneficiary under the will or intestacy of a person whom he has killed will be assumed, in the absence of evidence to the contrary, to have been of sound mind and thus guilty of murder (*Re Pollock* [1941] Ch. 219).

A provision, engrafted on to an absolute bequest and modifying it according as the beneficiary was or was not for the time being married to his then present wife, was held to be contrary to public policy, although the parties were separated when the will came into operation (*Re Caborne* [1943] Ch. 224).

The court itself ought to raise questions of public policy if none of the parties does so (*Beresford v Royal Insurance Co Ltd* [1938] A.C. 586, 594).

As to the right of a Minister or Government official, subpoenaed to produce a document in proceedings to which the Crown or the Minister is not a party, to refuse production on grounds of public policy, see per Viscount Simon L.C., *Duncan v Cammell Laird & Co* [1942] A.C. 624.

“Certain specific classes of contracts have been ruled by authority to be contrary to the policy of the law, which is, of course, not the same thing as the policy of the government, whatever its complexion—e.g. marriage brokerage contracts, contracts for the sale of honours, contracts in restraint of trade and so on. The courts have again and again said that, where a contract does not fit into one or other of these pigeon-holes but lies outside this charmed circle, the courts should use extreme reserve in holding a contract to be void as against public policy, and should only do so when the contract is incontestably and on any view inimical to the public interest” (per Asquith L.J., in *Monkland v Jack Barclay* [1951] 2 K.B. 252).

To establish for the purposes of s.68 of the Arbitration Act 1996 that an award was procured in a way contrary to public policy requires proof that some kind of reprehensible or unconscionable conduct on the part of the winning party had contributed significantly to obtaining the award (*Profilati Italia SRL v PaineWebber Inc* [2001] 1 Lloyd's Rep. 715).

PUBLIC PREACHING. See IN PUBLIC.

PUBLIC-PRIVATE PARTNERSHIP BUSINESS. Stat. Def., s.17 of the Government Resources and Accounts Act 2000 (c.20).

PUBLIC-PRIVATE PARTNERSHIP PROJECT. Stat. Def., s.72C of the Insolvency Act 1986 (c.45) inserted by s.250 of the Enterprise Act 2002 (c.40).

PUBLIC

PUBLIC POSTAL SERVICE. Stat. Def., s.2(1) of the Regulation of Investigatory Powers Act 2000 (c.23).

See *R. (TNT Post UK Ltd) v HMRC* [2009] 3 C.M.L.R. 18 ECJ.

PUBLIC PROCESSION. Stat. Def., Public Processions (Northern Ireland) Act 1998 (c.2) s.17(1).

PUBLIC PROPERTY. Stat. Def., Armed Forces Act 2006 s.26.

PUBLIC PROSECUTION. A prosecution instituted by the Director of Public Prosecutions under Prosecutions of Offences Act 1879 (c.22) is a “public prosecution” (*Marks v Beyfus*, 25 Q.B.D. 494).

PUBLIC PURPOSE. A bequest for charitable “or other purposes” is uncertain and bad (*Ellis v Selby*, 4 L.J. Ch. 69; 5 L.J. Ch. 214); so a bequest for “charitable or public purposes” (*Blair v Duncan* [1902] A.C. 37, cited CHARITABLE PURPOSE; on which case see per Lord Moncrieff, *Macintyre v Grimond*, 41 S.L.R. 225; see further RELIGIOUS); but if given for charities and “other public purposes” it is good, the word “public” indicating that the purposes are to be legally, if not popularly called, charitable (*Dolan v Macdermot*, 3 Ch. 676; see hereon 1 Jarm. (8th edn), 254, 255). See AND; PUBLIC.

But “a gift for ‘public purposes’ in a specified locality is a valid charitable trust; although a gift for public purposes generally, is void as being so general and undefined that it cannot be executed by the court” (per Swinfen Eady J., *Re Allen* [1905] 2 Ch. 400, citing *Goodman v Saltash*, 7 App. Cas. 633; *Mitford v Reynolds*, 12 L.J. Ch. 40; *Jones v Williams*, 2 Amb. 651; *Howse v Chapman*, 4 Ves. 542; *Dolan v Macdermot*, above, and *Vezy v Jamson*, 1 Sim. & St. 69). See INSTITUTION; PUBLIC UTILITY; CHARITABLE PURPOSE; PUBLIC CHARITY.

A workhouse is a “house”, and the supply of water to it by a water company is for “domestic”, and not “for public purposes” (*Liskeard Union v Liskeard Water Works Co* 7 Q.B.D. 505) See DOMESTIC.

For the purpose of the rateability or non-rateability of property to poor rate, a public purpose was, semble, synonymous with a Crown purpose: see per Bowen L.J., *Showers v Chelmsford Assessment Committee* [1891] 1 Q.B. 339.

A savings bank was not a “public or charitable purpose” within s.1 of the Punishment of Fraud Act 1857 (c.54) (*R. v Fletcher*, 31 L.J.M.C. 206).

Stat. Def., Electric Lighting Act 1882 (c.56) s.3.

PUBLIC READING. See IN PUBLIC.

PUBLIC RECEPTION. “Public reception of pregnant women”: see *R. v Manchester*, 4 B. & Ald. 504, cited HOSPITAL.

PUBLIC RECORDS. Stat. Def., Public Records Act 1958 (c.51) s.10 Sch.I.

“Welsh public records”: Stat. Def., Government of Wales Act 1998 (c.38) s.118.

See RECORD.

PUBLIC REFRESHMENT. Building kept for “public refreshment, resort, and entertainment” (Refreshment Houses Act 1860 (c.27) s.6): see ENTERTAINMENT; KEEP; REFRESHMENT HOUSE.

PUBLIC REGISTER. (Civil Jurisdiction and Judgments Act 1982 (c.27) Sch.1 art.16.) A company’s share register is a register to which the public have access and is therefore a “public register” within the meaning of this article (*Re Fagin’s Bookshop* [1992] B.C.L.C. 118).

PUBLIC RELIGIOUS WORSHIP. “Place appropriated to public religious worship”: see *Hornsey v Brewis*, 60 L.J.M.C. 48, cited INCUMBENT. See further

College Street Church Trustees v Edinburgh, 38 S.L.R. 265, and *North Manchester v Winstanley* [1908] 1 K.B. 835, cited EXCLUSIVELY. See also *Rogers v Lewisham BC* [1951] 2 K.B. 768, where classrooms were exempt from rates as they were used for a Sunday school.

(Places of Worship (Enfranchisement) Act 1920 (c.56).) Premises may be held upon trust to be used for the purposes of public religious worship, although minor parts of the premises are not so used (*Stradling v Higgins* [1932] 1 Ch. 143, 152).

"A place of public religious worship" (Rating and Valuation (Miscellaneous Provisions) Act 1955 (c.9) s.7(2)(a); now General Rate Act 1967 (c.9) s.39) did not include a Mormon Temple to which only approved persons were admitted (*Church of Jesus Christ of Latter Day Saints v Henning* [1963] 3 W.L.R. 88; [1962] 2 All E.R. 733). For a building to establish itself as a "place of public religious worship" for the purposes of this section there had to be signs to indicate that it was open to the public, and the nature of the activities carried on inside it had in some way to be brought to the notice of the outside world. Thus two meeting halls used by the Exclusive branch of the Plymouth Brethren were not places of public religious worship (*Broxtowe BC v Birch* [1983] 1 W.L.R. 314). See also PUBLIC WORSHIP.

"Place of religious worship": see PLACE.

PUBLIC RESORT. (Vagrancy Act 1824 (c.83) s.4.) A racecourse enclosure is a "place of public resort" even though a charge is made for admission (*Glynn v Simmonds* [1952] 1 T.L.R. 1442).

See RESORT; PUBLIC PLACE.

PUBLIC REVENUE. "Public revenue" (Income Tax Act 1952 (c.10) s.457(4), now Income and Corporation Taxes Act 1970 (c.10) s.366(3)) does not include local authority funds (*Lush v Coles* [1967] 1 W.L.R. 685).

"Public revenue dividend" (Income and Corporation Taxes Act 1970 (c.10) ss.93, 107 and 1988 (c.1) ss.17, 45). Interest on damages payable by the Crown as tortfeasor was not a "public revenue dividend" for the purposes of taxation under Sch.C (*Esso Petroleum Co v Ministry of Defence* [1989] 3 W.L.R. 1129).

Stat. Def., Income and Corporation Taxes Act 1970 (c.10) s.107.

PUBLIC RIGHT. See RIGHT OF WAY.

PUBLIC RIVER. See RIVER.

PUBLIC ROAD. "A road becomes public by reason of a dedication of the right of passage to the public by the owner of the soil, and of an acceptance of the right by the public or the parish" (per Littledale J., *R. v Mellor*, 1 B. & Ad. 37). See further *R. v St Benedict*, 4 B. & Ald. 447; *R. v Leake*, 5 B. & Ad. 469; *Selby v Crystal Palace Gas Co*, 10 W.R. 432, 636; *Grand Junction Canal Co v Petty*, 21 Q.B.D. 273. See also *Taff Vale Railway v Pontypridd*, 93 L.T. 126; *Att-Gen v London & South Western Railway*, 21 T.L.R. 220, cited DEDICATION.

"Public road", as regards the Telegraph Acts: Stat. Def., Telegraph Act 1863 (c.112) s.3; see also *South Eastern Railway v National Telephone Co*, 77 L.J. Ch. 682, cited ACROSS; Telegraph Act 1878 (c.76) s.2; Telegraphs (Construction) Act 1911 (c.39) s.7.

(Vehicles (Excise) Act 1962 (c.13) ss.7, 24(1)); Vehicles (Excise) Act 1971 (c.10) ss.8(1), 38(1).) A lay-by on a service road constructed by the local housing authority is part of a "public road" within the meaning of these sections (*Macneill v Dunbar* [1966] Crim. L.R. 336).

Stat. Def., Vehicles (Excise) Act 1971 (c.10) s.38; Hydrocarbon Oil Duties Act 1979 (c.5) Sch.1 para.3; Vehicle Excise and Registration Act 1994 (c.22) s.62(1).

See HIGHWAY; PUBLIC HIGHWAY; PUBLIC PASSAGE; PUBLIC WAY; ROAD; TURNPIKE ROAD.

PUBLIC SAFETY. These words in Defence of the Realm Act 1914 (c.29) s.1(1), and the Regulations made thereunder, did not only refer to safety against invasion by a foreign enemy, but also to regulations made for preventing rebellion and internal disorder: see *R. v Governor of Wormwood Scrubs Prison* [1920] 2 K.B. 305.

PUBLIC SCHOOL. The City of London School, though partly supported by the fees payable by the scholars, was a "public school" within Sch.A No.VI (Allowances) to s.60 of the Income Tax Act 1842 (c.35) (*Blake v London Corp*, 19 Q.B.D. 79); but some charitable element is implied in the phrase (*Needham v Bowers*, 21 Q.B.D. 442). A theological college for educating ministers for the Free Church of Scotland is not a "public school" within the allowances (*Bain v Free Church of Scotland* [1897] W.N. 140).

In the first cited case, Denman J. said that, "a definition of 'public school' is nowhere to be found either at common law, or in any law book, or Act of Parliament. It is, therefore, a very mixed question of law and fact, though in its nature it is very much a question of fact".

Income Tax Act 1918 (c.40) Sch.A No.VI r.1: included a school of the Girls Public Day School Trust (*Girls Public Day School Trust v Ereaut* [1931] A.C. 12).

"The Public School Acts 1868 to 1873": see Sch.2 to the Short Titles Act 1896 (c.14); see also *Cardinal Vaughan Memorial School Trustees v Ryall*, 36 T.L.R. 694; *Ackworth School v Betts*, 84 L.J.K.B. 2112; *Ereaut v Girls' Public Day School Trust* [1929] 2 K.B. 274, reversed [1931] A.C. 12.

See CHARITY SCHOOL; HOSPITAL; PUBLIC ELEMENTARY SCHOOL.

PUBLIC-SECTOR BODY. Stat. Def., "means the Treasury or any Minister of the Crown, the [Coal] Authority, a local authority, any company which is wholly owned by the Crown or any body which is not a company but is established by or under any enactment for the purpose of carrying out functions conferred on it by any enactment or subordinate legislation" (Coal Industry Act 1994 (c.21) Sch.4. para.1(2)).

PUBLIC SECURITIES. "Public securities" in the Stock Jobbing Act 1734 (c.8) did not include foreign securities (*Wells v Porter*, 5 L.J.C.P. 250). In that case, Bosanquet J. said, "When we find the expression 'public stock' we must intend the public stocks of this country". See further *Hewitt v Price*, 4 M. & G. 355.

Semble, "public securities", in an investment clause, is a wider term than "Government Securities" (per Shadwell V.C., *Sampayo v Gould*, 12 Sim. 435).

PUBLIC SERVICE. The "public service"—an existing contract for or on account of which disqualified the contractor from being elected to the House of Commons (House of Commons (Disqualification) Act 1781 (c.45) s.1)—meant the Government of the United Kingdom, and included any service of the Crown anywhere, so where a Member of Parliament was a partner in a firm which had made a contract with the Secretary of State for India in Council for the service of the Crown in India, the contract to be paid for out of the Revenues of India, he was held to be disqualified from sitting or voting in the House of Commons: see *Re Samuel (Sir Stuart)*, 82 L.J.P.C. 106; *Forbes v Samuel* [1913] 3 K.B. 706. Probably, a contract made with an agent of the Government, though the payment thereunder would not have been out of the public funds of Great Britain, e.g., one with the Secretary of State for India, would have been within the phrase (*Royse v Birley*, L.R. 4 C.P. 296, especially judgment of Brett J.); but the contract had to be immediately with the Government or its agent;

therefore, if an army officer, having an allowance for the clothing of his men, personally entered into a contract for the supply of such clothing, that was not a contract “for or on account of the public service” within the section (*Thompson v Pearce*, 1 Brod. & B. 25); a contract for the supply of goods to the state lunatic asylum at Broadmoor was within the section (*Royse v Birley*, above). See further UNDERTAKE; KNOWINGLY.

But a requisition which the Board of Trade may be authorised to make on a railway company as being “requisite for the public service”, was not narrowed to the service of the Government; the phrase included “any service which would supply wants felt by the public, or which the public might reasonably be desirous of having on its own behalf” (*Re Launceston Railway Acts*, 3 Ry. & Can. Tr. Cas. 139).

Employment as a foreign language assistant in a university was not employment in the “public service” within the meaning of art.48(4) of the EEC Treaty (*Alluè v Università degli Studi di Venezia* [1989] E.C.R. 1591).

Stat. Def., Road Traffic Act 1960 (c.16) ss.117, 118, 257.

“[T]he provision of protection and compensation for victims of accidents involving uninsured or untraced drivers... is a ‘public service’.” (*Byrne v Motor Insurers’ Bureau* [2007] EWHC 1268 (QB) per Flaux J. at [58].)

Stat. Def., Identity Cards Act 2006 s.42(2).

See PARLIAMENT; POLICE; PUBLIC OFFICE.

PUBLIC SERVICE PENSION SCHEME. Stat. Def., Finance Act 2004 (c.12) s.150.

PUBLIC SERVICE PENSIONS LEGISLATION. Stat. Def., Pension Schemes Act 2015 s.7.

PUBLIC SERVICE VEHICLE. (Public Passenger Vehicles Act 1981 (c.14) s.1(1).) A person who used his privately owned motor vehicle to carry girls to school, receiving payment of petrol money, and who was undertaking a systematic carrying of passengers for reward which went beyond the bounds of social kindness, was held to have been “carrying passengers for hire or reward” for the purposes of this section and, therefore, of operating a “public service vehicle” (*DPP v Sikondar* [1993] R.T.R. 90). Courtesy coaches provided by a hotel for use by its customers were “public service vehicles” carrying passengers for hire or reward within the meaning of this section (*Rout v Swallow Hotels* [1993] R.T.R. 80).

Stat. Def., Public Passenger Vehicles Act 1981 (c.14) s.1.

PUBLIC SEWER. A sewer constructed by the local authority at its own expense is a “public sewer” within ss.20(1)(b) and 15(1)(i)(b) of the Public Health Act 1936 (c.49) even though it is merely a short part of a longer pipe, the rest of which is private (*Moore v Frimley and Camberley UDC*, 63 L.G.R. 194). A sewer which was designed to drain surface water from a large number of houses, shops and offices was a “public sewer” for the purposes of this section, even though it would also drain several miles of road and take water directly from a river (*Hutton v Esher UDC* [1974] Ch. 167). A sewer privately laid under a public highway, the construction of which had been approved by the local authority, and which they had intended to adopt, was held to have acquired the status of a “public sewer” within the meaning of ss.15 and 20 of the 1936 Act, even though no formal resolution of adoption had been passed (*Royco Homes v Eatonwill Construction; Three Rivers DC, Third Party* [1979] Ch. 276). But

PUBLIC

a drain pipe constructed by a local authority at its own expense does not necessarily become a “public sewer” within the meaning of these sections (*Cook v Minion* (1978) 37 P. & C.R. 58).

Stat. Def., Public Health Act 1936 (c.49) s.20(2); Water Act 1973 (c.37) s.38(1).

PUBLIC SINGING. By simply providing a pianoforte and letting his customers amuse themselves with playing and singing, a publican did not “keep or use” his premises for “public singing or music” within Public Health Act 1890 (c.59) s.51 (*Brearley v Morley* [1899] 2 Q.B. 121). See further KEEP.

See PUBLIC BALL; PUBLIC DANCING.

PUBLIC SITUATION. “Public and conspicuous situation” (Parliamentary Voters Registration Act 1843 (c.18) s.23): see *Hildred v Ingram*, 64 L.J.M.C. 57.

Cp. PUBLIC PLACE.

PUBLIC STATUTE. See PUBLIC ACT OF PARLIAMENT.

PUBLIC STOCKS. For the purpose of the Dividends and Stock Act 1869 (c.104), “public stocks” meant and included “any stock forming part of the National Debt, and transferable in the books of the bank” (s.6). The words “public stocks of the Bank of England” in a will were held to have the same meaning: see *Re Hill* [1914] W.N. 152.

See PUBLIC SECURITIES; GOVERNMENT STOCK.

PUBLIC STORES. See STORES.

PUBLIC STREET. “Public street, road or place” (Metropolitan Public Carriage Act 1869 (c.115)) included private land adjoining a public street, without any intervening barrier, and fully visible from it (*White v Cubitt* [1930] 1 K.B. 443).

See STREET; PLY.

PUBLIC TAX. “Public taxes, or levies of the town or parish” (Public Accounts Act 1692 (c.11) s.6): see *R. v St. Thomas*, L.R. 5 Q.B. 371. See further TAXES.

Poor rate was a “public tax” for the purpose of an eleemosynary exemption (*R. v Scot*, 3 T.R. 602).

See RATE.

PUBLIC TELECOMMUNICATION SYSTEM. Stat. Def., s.2(1) of the Regulation of Investigatory Powers Act 2000 (c.23).

PUBLIC THOROUGHFARE. See HIGHWAY; NEAREST; PUBLIC HIGHWAY; PUBLIC ROAD; TRAVELLER.

PUBLIC TRADE OR BUSINESS. A girls’ school is a breach of a covenant not to suffer “any public trade or business” to be carried on (*Wickenden v Webster*, 25 L.J.Q.B. 264; BUSINESS). Cp. PUBLIC OFFICE.

Things delivered to a person exercising a “public trade”—to be carried, wrought, worked-up, or managed, in the way of his trade or employ—were exempt from distress (*Simpson v Hartopp*, Willes 512; 1 Sm. L.C. 463; see DELIVERY). On that, Patteson J. said, “I do not know what is meant by the phrase ‘public trade’” (*Gibson v Ireson*, 3 Q.B. 44); but each of the following is a “public trade” within this rule: auctioneer (*Adams v Grane*, 2 L.J. Ex. 105; *Williams v Holmes*, 8 Ex. 861); butcher (*Brown v Shevill*, 4 L.J.K.B. 50); carrier (*Gisbourn v Hurst*, 1 Salk. 249); clothier, farrier, innkeeper, miller, tailor, weaver (Co. Litt. 47A; *Rede v Burley*, Cro. Eliz. 596); factor or commission agent (*Gilman v Elton*, 3 Brod. & B. 75; *Findon v M’Laren* 6 Q.B. 891); pawnbroker (*Swire v Leach*, 34 L.J.C.P. 150); warehouseman (*Miles v Furber*, L.R. 8 Q.B. 77); wharfinger (*Thompson v Mashiter*, 1 Bing. 283; *Matthias v Mesnard*, 2 C. & P. 353). See hereon Rose. N.P. (20th edn), 904. See *Clarke v Millwall*

Dock Co, 17 Q.B.D. 494, cited *DELIVERY*; *Challoner v Robinson* [1908] 1 Ch. 49. Cp. TOOL. Crown goods are exempt from distress (*Secretary for War v Wynne* [1905] 2 K.B. 845).

The only public business which (under pain of indictment or action) must be carried on by those who profess them (if they are at the time able to do so) are, semble, those of an innkeeper, and, possibly, a carrier (per Parke B., *Muspratt v Gregory*, 1 M. & W. 653).

PUBLIC TRAFFIC. A railway "authorised to be open for public traffic" means "open" for public traffic generally, and not merely open for mineral traffic" (per Lindley M.R., *Great Central Railway v Metropolitan Railway*, 15 T.L.R. 86). See OPEN; RAILWAY; TRAFFIC.

PUBLIC TRANSPORT. An aircraft is deemed to fly for the purpose of "public transport" within art.91(1)(6)(a)(i) of the Air Navigation Order 1971 (No.1114) if payment is made for its use. It is not necessary that there should be a profit element, and the payment could be, as in this case, merely a contribution towards the costs made by friends to whom the pilot is giving a lift (*Corner v Clayton* [1976] 1 W.L.R. 800).

PUBLIC TRUSTEE. The Public Trustee was established as a corporation, and his powers, duties, etc. were provided for by the Public Trustee Act 1906 (c.55). See hereon *Re Hope-Johnstone*, 53 S.J. 321, cited TRUSTEE; *Re Deveraux*, 55 S.J. 715, cited SMALL; *Re Woolley*, 55 S.J. 220. See further *Re Leslie's Hassop Estates* [1911] 1 Ch. 611; *Re Drakes's Settlement* [1926] W.N. 132; *Re Moxon* [1916] 2 Ch. 595.

(Public Trustee Act 1906 (c.55) s.5(1).) When appointed the sole trustee of a trust, the Public Trustee may exercise the discretions and discretionary powers conferred on the trustees by the trust instrument even though the instrument expressly provides that those powers should not be exercisable at a time when there are less than two trustees (*Duxbury's Settlement Trusts, Re*; [1995] 3 All E.R. 145).

PUBLIC TRUSTS. Trusts of land belonging to an unincorporated society, confined to members paying an annual subscription and having as its object the encouragement of literature, science and art, held to be "public trusts" within s.29 of the Settled Land Act 1925 (c.18) (*Re Cleveland Literary and Philosophical Society's Land* [1931] 2 Ch. 247).

PUBLIC UNDERTAKING. See *Gardner v London, Chatham & Dover Railway*, 2 Ch. 201; *Blaker v Herts & Essex Waterworks Co*, 58 L.J. 497; UNDERTAKING.

PUBLIC USE. A "public use" of an invention does not mean a general use, but a use in public as distinguished from one that is secret (*Carpenter v Smith*, 11 L.J. Ex. 213; see *Patterson v Gas Light & Coke Co*, 3 App. Cas. 239; *Stead v Williams*, 2 Webster 136; *Brereton v Richardson*, 1 Pat. Cas. 173). See further *Gill v Cutler*, 33 S.L.R. 218.

The "public use" of a trade-mark (Patents, etc. Act 1888 (c.50) s.17) was not used since registration, but use and the reputation gained by it at the time of the application for registration; continued registration was not equivalent to continued user (*Re Batt* [1898] 2 Ch. 432; in House of Lords sub nom. *Batt v Dunnett* [1899] A.C. 428).

A churchyard is a "place dedicated to public use" (*R. v Jones*, 27 L.J.M.C. 171, cited METAL)

See USE.

PUBLIC UTILITY. A bequest for undertakings of "public utility" is void unless made definite by being confined to a specified locality (per Lord Davey, *Hunter v*

Att-Gen [1899] A.C. 323; *Langham v Peterson*, 67 J.P. 75; see further GENERAL UTILITY); it is very similar to one for a public purpose. But, on the other hand, Kekewich J. held that a gift for “such public charities and institutions or for such charitable purposes for the public advantage or benefit” as the trustees should think worthy, was good (*Re Pardoe* [1906] 2 Ch. 184). See *Re Allen* [1905] 2 Ch. 400, cited PUBLIC PURPOSE; *Re Davis* [1923] 1 Ch. 225.

PUBLIC VEHICLE. Stat. Def., Representation of the People Act 1983 (c.2) s.101.

PUBLIC WALKS. “Public walks and pleasure grounds”: see PLEASURE.

PUBLIC WASH-HOUSE. See BATH.

PUBLIC WAY. “By public way, I mean not merely a mail-coach road, but every WAY which is common to the Queen’s subjects” (per Pennefather B., *Devoy’s Case*, Ir. Cir. 74, 75). See further DEDICATION; HIGHWAY; PUBLIC ROAD; *Campbell v Lang*, 1 Macq. 451.

PUBLIC WHARF. A public wharf or quay is one which is common to all the King’s subjects; a claim of a “public wharf”, without more, involves that it is claimed by immemorial usage (*Bolt v Stennott*, 8 T.R. 606).

PUBLICAN. The prohibition, in a lease, of the business “of a victualler or publican”, will include a beer-shop (Beerhouse Act 1830 (c.64) s.31). Cp. *Re Cullen and Rial* [1904] 1 I.R. 206, cited SPIRIT GROCER.

PUBLICATION. Stat. Def., Crime and Courts Act 2013 s.42.

“67. Turning to the definition of ‘publication’ in the Contempt of Court Act 1981, I admit to having some real difficulties, particularly in the context of section 11. One possible answer may be that s.2(1) does not in terms define ‘publication’, but rather merely confirms that it includes any communication addressed to at least ‘any section of the public’, thus arguably merely emphasising the breadth of the term as used in the Act rather than imposing a restriction. However, as Elias LJ indicates, as a matter of construction, there is difficulty with the notion of a private disclosure to one individual in this statutory context being a ‘publication’—I should add that I find his suggestion as to why the difficulty arises compelling—and, as the point I make with regard to the ambit of s.2(1) was not fully argued before us, I would hesitate to say more without some such debate. But, in any event, I am sure that s.11 of the 1981 Act does not exhibit an intention on the part of Parliament to restrict the powers of the court designed to ensure that justice is done. In my view, far clearer words would have been necessary to have had that effect.” (*Yam, R. (on the application of) v Central Criminal Court* [2014] EWHC 3558 (Admin).)

PUBLICATION; PUBLISH. “Publication” is accomplished in a variety of ways according to the subject-matter.

A book or other literary matter is published by being surrendered by its author for public use. Thus the sale of a manuscript copy of a book is a publication of it (*White v Geroch*, 1 Chit. 26). But a circulation amongst friends gratuitously, or to pupils, e.g. by lectures, is not (*Queensbury v Shebbeare*, 2 Ed. 329; *Prince Albert v Strange*, 18 L.J. Ch. 120; *Caird v Sime*, 12 App. Cas. 326; *Palmer v Dewitt*, 23 L.T. 823; *Bartlett v Crittenden*, 4 McLean 300); so, of a circulation amongst subscribers for their private use (*Exchange Telegraph Co v Central News* [1897] 2 Ch. 48). Nor is the use of letters as evidence in court a publication (7 Jarman Conv. by Sweet, 628 n). See FIRST PUBLICATION; PRODUCED.

A newspaper, or periodical, is published whenever and wherever it is offered to the public by the proprietor (*McFarlane v Hulton* [1899] 1 Ch. 884).

Acting a play is not a "publication" of it, according to the primary meaning of that word (*Palmer v Dewitt*, above), but for the purposes of the Copyright Acts the first public representation of a drama or musical composition is equivalent to the first publication of a book (Copyright Act 1842 (c.45) s.20); see further per James L.J., *Boucicault v Chatterton*, 5 Ch. D. 275, cited FIRST PUBLICATION.

As to what was a sufficient first publication of a song under the Copyright Act 1911 (c.46) s.1, see *Francis, Day & Hunter v Feldman & Co*, [1914] 2 Ch. 728. See also s.35(3).

A sculpture, or bust, was published (Sculpture Copyright Act 1813 (c.56) s.1) by being publicly exhibited (*Turner v Robinson*, 10 Ir. Ch. R. 516). See PRODUCED. See further *Brittain v Hanks*, 86 L.T. 765.

"Publishing the work" (Copyright Act 1956 (c.74) s.3(5)(b)) means making public in the United Kingdom a work hitherto unpublished there (*Infabrics v Jaytex* [1981] 2 W.L.R. 646).

"Published" (Copyright Act 1956 (c.74) s.49(2)(c)). The sale to the public of electric light fittings made in accordance with certain drawings constitutes publication within the meaning of this section, and the drawings thus become "published" works for the purposes of s.3(3) (*Merchant-Adventurers Ltd v Grew (M.) & Co* [1972] Ch. 242).

"Publication" of a design: see *Blank v Footman*, 39 Ch. D. 678; *Gunston v Winox Ltd* [1921] 1 Ch. 664.

The "prior publication" of an invention which will invalidate a patent means the prior existence in this country of some document to which the public have access, containing such a description of the invention as will enable a practical man to carry it out from the description given (Terrell on Patents (3rd edn), 58); such access being of such a kind as to raise a reasonable probability that the knowledge on which the invention is based might have been obtained from the document (per Pearson J., *Otto v Steel*, 31 Ch. D. 241, disapproving of the dicta in *Lang v Gisborne*, 31 L.J. Ch. 769; and *Plimpton v Malcolmson*, 3 Ch. D. 531). See ANTICIPATION; FIRST INVENTOR. See hereon *Lifeboat Co v Chambers*, 28 S.L.R. 674; *Anglo-American Brush Electric Light Co v King*, 30 S.L.R. 21.

"Published" (Patents Act 1949 (c.87) ss.14(1)(b)(ii), 101(1)). The communication to the employee of a company of the specification supporting a patent application in South Africa was held to be a publication within the meaning of this section (*R. v Patents Appeal Tribunal, Ex. p. Lovens Kemiske Fabriks* [1968] 1 W.L.R. 1727).

"Photographic negatives": see *Cox v Stinton* [1951] 2 K.B. 1021; *Straker v DPP* [1963] 1 Q.B. 926; the Obscene Publications Act 1964 (c.74) s.2.

The showing of a film to a cinema audience is not a "publication" for the purposes of the Obscene Publications Act 1959 (c.66) s.2(6) (*Att-Gen's Reference (No.2 of 1975)* [1976] 1 W.L.R. 710).

An award is published, and "ready to be delivered", as soon as it is completed and executed by the arbitrator (*Brooke v Mitchell*, 6 M. & W. 473); but, semble, even where the words used are "ready to be delivered", the award may be by parol. See DELIVER.

"Made and published to the parties" (R.S.C. Ord.73 r.5(1)). Publication to the parties of an arbitrator's award under this rule was completed on receipt by the parties of the notice informing them that the arbitrator's award was ready for collection (*The Archipelagos and Delfi* [1979] 2 Lloyd's Rep. 289).

PUBLICLY

A libel is published, for the purpose of a civil action, when (its contents being known, or negligently unknown) (*Emmens v Pottle*, 16 Q.B.D. 354; see as to that case *Vizetelly v Mudie's Library* [1900] 2 Q.B. 170) it is communicated to any one (even the libelled's wife, *Wenman v Ash*, 13 C.B. 836), other than the person libelled; but the qualification contained in the last five words does not apply in criminal proceedings for libel (Steph. Cr. (9th edn), 290). Cp. as regards civil libel, *Pullman v Hill* [1891] 1 Q.B. 524, with *Boxius v Goblet*, [1894] 1 Q.B. 842. As to the effect of *Pullman v Hill*, as explained by *Boxius v Goblet*, see *Edmondson v Birch* [1907] 1 K.B. 371. As to publication by a postcard, see *Sadgrove v Hole* [1901] 2 K.B. 1; *Watt v Longsdon*, 45 T.L.R. 619; *Osborn v Boulter*, 99 L.J.K.B. 556.

"Publication of a will": see DELIVERY; *Vincent v Sodor and Man (Bishop)*, 8 C.B. 905; *Johns v Dickinson*, 8 C.B. 934. Re-publication, or re-execution: see *Re Truro*, L.R. 1 P. & D. 201; *Re Rendle*, 68 L.J.P.D. & A. 125.

"Any advertisement is published" (Betting, Gaming and Lotteries Act 1963 (c.2) s.10(5)). An advertisement placed in a betting shop window so that it could only be seen from outside the premises was held to have been "published" contrary to this section (*Windsors (Sporting Investments) v Oldfield*; *Boulton v Coral Racing* [1981] 2 All E.R. 718).

"Publication" (Obscene Publications Act 1959 (c.66) s.2(6)). The act of developing, printing and selling photographic films depicting obscene acts was capable of amounting to an act of publication within the meaning of this section (*R. v Taylor (Alan)*, *The Times*, February 4, 1994).

Stat. Ref., "includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme is to be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal" proceedings" (Criminal Justice Act 2003 (c.44) s.71).

Stat. Def., Legal Deposit Libraries Act 2003 (c.28) s.14.

Stat. Def., Copyright, Designs and Patents Act 1988 (c.48) s.175; Knives Act 1997 (c.21) s.10.

"Representations which are otherwise published": see REPRESENTATION.

Stat. Def., Copyright Act 1911 (c.46) s.1; Criminal Justice Act 1967 (c.80) s.36; Race Relations Act 1976 (c.74) s.70(6); Patents Act 1977 (c.37) s.130; Magistrates' Courts Act 1980 (c.43) s.8; Contempt of Court Act 1981 (c.49) s.2.

Stat. Def., Children, Schools and Families Act 2010 s.21.

Stat. Def., "'publication' means an article or record of any description that contains any of the following, or any combination of them—(a) matter to be read; (b) matter to be listened to; (c) matter to be looked at or watched." (Terrorism Act 2006 s.2(13).)

"Publish a statement": Stat. Def., Terrorism Act 2006 s.20(4).

"Published": Stat. Def., Patents Act 1949 (c.87) s.101(1).

See DEFINITIVE; PUBLISH.

See also DISCLOSE.

PUBLICLY OWNED. Stat. Def. (in relation to shares), Finance (No.2) Act 1997 (c.58) s.5(1).

PUBLICLY-OWNED COMPANY. Stat. Def., s.6 of the Freedom of Information Act 2000 (c.36).

PUBLISH. Section 97(1)(a) of the Children Act 1989 prohibits publication of material intended or likely to identify a child as being involved in proceedings before

a county court. This and other provisions “raise the same question: what is meant by publication? . . . I do not read a narrower sense in the dictionary definition and would accept that a conversation between the Children and Family Reporter and another individual might amount to publication, but I cannot accept that a Children and Family Reporter publishes, and thereby exposes himself to a risk of contempt, when he reports concerns to the relevant statutory authority charged with the collection and investigation of material suggestive of child abuse. Such a communication between two professionals exchanging information in the course of their respective functions, each acting in furtherance of the protection of children, does not constitute a publication breaching the privacy of contemporaneous 1989 Act proceedings.” (*Re M. (a child)* [2002] 4 All E.R. 401 at 407, CA per Thorpe L.J. (also [2002] 3 W.L.R. 1669, CA).)

Stat. Def., “means make available to the public at large, or any section of the public, in whatever form and by whatever means” (s.125(4) of the Political Parties, Elections and Referendums Act 2000 (c.41)).

Stat. Def., “In relation to journalistic, literary or artistic material, means make available to the public or any section of the public” (Data Protection Act 1998 (c.29) s.32(6)). See PUBLICATION; PUBLISH.

An internet service provider which performs a merely passive role in facilitating postings on the internet is not a publisher at common law for purposes of the law of defamation (*Bunt v Tilley* [2006] EWHC 407 (QB)).

Stat. Def. (but only by reference to the common law), Defamation Act 2013 s.15.

“44. . . . I base that conclusion on a straightforward interpretation of the statutory formula in s.118(1)(b) of the 2008 Act—‘the day on which the order is published’ or, if later, ‘the day on which the statement of reasons for making the order is published’. The words mean what they say. What they mean, in their ordinary sense, is the day on which the order, or the statement of the Secretary of State’s reasons for making it, is put into the public domain. The concept of publication in this context, I think, reflects the normal meaning of the verb to ‘publish’—to ‘[make] generally known, declare or report openly; announce . . .’ (*Shorter Oxford English Dictionary*, 6th edn). The same may be said of the concept of the Secretary of State’s reasons for a refusal of development consent being ‘published’, as the parallel provision for that eventuality is framed in s.118(2)(b). Here again the focus is on the reasons for the Secretary of State’s decision being made known to the general public, as well as to those members of the public particularly affected by it. The critical step, which starts the period for challenge, is the publication of the Secretary of State’s reasons for his decision.

45. The way in which an order and the Secretary of State’s statement of reasons for making it are to be ‘published’ is not prescribed by s.118. But in my view the placing of the order on the Planning Inspectorate’s infrastructure planning website on 12 September 2014, together with the Secretary of State’s decision letter and the Examining Authority’s report, and, on the same day, the notification of interested parties, both by e-mail and by post, that this had been done, was enough to constitute publication of the order, and the reasons why it was made, within the meaning of s.118. . . .

46. I do not accept that the provisions of s.117 point to some other understanding of s.118. There is clearly a difference between the concept of publishing a development consent order by making it known to the public that the order has been made, and the concept of the formalities involved in the making of a statutory instrument. Section

PUBLISHER

117(3) allows the Secretary of State to publish an order granting development consent 'in such manner as [he] thinks appropriate' unless the order falls within the ambit of s.117(4), in which case it 'must be contained in a statutory instrument'. The status of a development consent order as a statutory instrument, if it has to be in that form, requires a particular statutory process to be followed. That process has to be followed, no matter how the Secretary of State has initially published the order and his reasons for making it. The relevant provisions of the 1946 Act and 1947 regulations lay down the procedure by which statutory instruments are to be promulgated, and provide differently for local instruments and general instruments in the formal steps required. In this case it was necessary for the development consent order to be contained in a statutory instrument. As a local instrument it was exempt from the requirements of s.2(1) of the 1946 Act. Mr Hunter does not suggest that any of the necessary formalities under the 1946 Act and 1947 regulations were neglected. But in any event the order and the Secretary of State's reasons for making it were in the public domain on 12 September 2014, and interested parties had been told on the same day that this was so. That is the crucial point.

47. If Parliament had intended to include in s.118 different concepts of a development consent order being 'published' depending on whether or not it was required to be contained in a statutory instrument, I think it would have done so. Had the intention been to provide that the period for challenge would start only when a particular requirement of the 1946 Act or the 1947 regulations had been discharged, this could have been done. But it was not. I doubt that such provisions would have been conducive to clarity, certainty and consistency in the statutory regime for challenging decisions on applications for development consent orders. The fact is, however, that s.118 was not drafted in that way. And I do not think the court should imply into it provisions that Parliament did not see fit to insert. . . .

49. So one is left with the simple concept of a development consent order being published on the day when the order itself and the Secretary of State's reasons for making it are made known to the public. That is how s.118(1)(b) of the 2008 Act should be understood." (*Williams, R. (on the application of) v Secretary of State for Energy and Climate Change* [2015] EWHC 1202 (Admin).)

See PUBLICATION.

PUBLISHER. Stat. Def., Defamation Act 1996 (c.31) s.1(2).

An internet search engine is not a publisher (*Metropolitan International Schools Ltd v Designtechnica Corporation* [2009] EWHC 1765 (QB)).

Stat. Def., Children, Schools and Families Act 2010 s.21.

PUBLISHES. See PERSON WHO PUBLISHES.

PUBS CODE. Stat. Def., Small Business, Enterprise and Employment Act 2015 s.42.

PUFFER. A "puffer" at a sale by auction of lands (and, semble, generally) meant "a person appointed to bid on the part of the owner" (Sale of Land by Auction Act 1867 (c.48) s.3); see thereon *Shimmin v Bellew*, I.R. 1 Eq. 289. See further RESERVED BIDDING.

As regards this word in a pleading, see *Jones v Quinn*, 2 L.R. Ir. 516.

PUISNE. A puisne judge in England was one of the Justices of the old Courts of King's Bench, or Common Pleas, or one of the Barons of the old Court of Exchequer, other than the Chief (3 BL. COM. 41, 45). See also Judicature Act 1925 (c.48) s.2.

A puisne mortgagee or incumbrancer is a mortgagee other than the subordinate to the first mortgagee, from whom accordingly he may purchase the mortgaged property when the first mortgagee is selling under a power of sale (*Shaw v Bunny*, 34 L.J. Ch. 257). As to the redemption of first mortgagee by puisne mortgagee, see Fisher and Lightwood (7th edn), 597, 776. Cp. equitable mortgage, under MORTGAGE. See further REAL SECURITY; *Chapman v Browne* [1902] 1 Ch. 785, cited REASONABLY.

"Puisne mortgage": see Land Charges Act 1925 (c.22) s.10; Law of Property Act 1969 (c.59) s.30.

Cp. MESNE; PREMIER.

PULL DOWN. See DEMOLISH; TAKE DOWN; UNNECESSARY INCONVENIENCE.

PUMP. "Pumping engines for hydraulic power" (Plant and Machinery (Rating) Order 1960 (SI 1960/122) Sch. Class 1A Table 1A(h)): see *Chesterfield Tube Co v Thomas* [1970] 1 W.L.R. 1483.

PUNCTUAL. Where a thing has to be done "punctually" on a day named, that means on the very day; any day after the day named is too late (*Leeds Theatre Co v Broadbent* [1898] 1 Ch. 343; *Hicks v Gardner*, 1 Jur. 541). Therefore, a mortgage stipulation that it is not to be called in, or that its interest is to be reduced, if the interest is "punctually" paid, will only be operative if such interest is paid on or before the day or days named (*ibid.*). See further *Simpson v Manley*, 2 Cr. & J. 12, cited CREDIT. See also *Union Bank of London v Ingram*, 16 Ch. D. 53, and *Bright v Campbell*, 41 Ch. D. 388 cited IN ARREAR.

But for the purpose of a clause in a charterparty authorising the shipowner to withdraw the vessel if there be failure in "the punctual and regular payment" of the monthly hire, Bigham J. held that a tender, made immediately after a notice withdrawing the vessel because there had been one default, was not too late, such tender being only two days after the due day (*Nova Scotia Steel Co v Sutherland Co*, 5 Com. Cas. 106).

So, where a landlord has agreed to forgo certain arrears of rent if the subsequent rent were "punctually" paid, "punctually" is a word of time; and therefore it is not a question of whether the subsequent rent was faithfully or honourably paid, but whether it was 'punctually' paid— i.e. paid at the time stipulated" (per Robertson L.P., *Scott-Chisholme v Campbell's Trustee*, 30 S.L.R. 558). See further *MacLaine v Gatty* [1921] 1 A.C. 376. Where a promissory note, repayable by instalments provided that if any instalment should not be paid "punctually", the whole balance was immediately to become payable, the use of the word punctually did not deprive the maker of the note of the three days of grace allowed by Bills of Exchange Act 1882 (c.61) s.14, in every case where the bill itself did not otherwise provide: see *Schaverein v Morris*, 37 T.L.R. 366.

Cp. "Duly paid", under DULY.

PUNISH. "Like proceedings for punishing or remedying" (Factory and Workshop Act 1901 (c.22) s.5(3)): see per Alverstone C.J., *Tracey v Pretty* [1901] 1 K.B. 444, cited SANITARY.

"Punishable only on summary conviction" (Perjury Act 1911 (c.6) s.16(3)): see *R. v Bradbury* [1921] 1 K.B. 562.

PUNISHMENT. "Punishment or measure prescribed by its own law" (Convention on the Transfer of Sentenced Persons 1983 (Cmd.9617) art.10 para.2) does not mean

the maximum punishment prescribed by law but what would normally be given for the same offence (*R. v Secretary of State for the Home Department, Ex p. Read* [1988] 2 W.L.R. 236).

PUPIL. Stat. Def., Education Act 1980 (c.20) s.24.

Stat. Def., “in relation to an establishment includes any person who receives education at the establishment” (Equality Act 2006 s.49(2)(b)).

See INFANT.

PUR AUTRE VIE. “By common speech, he which holdeth for terme of his owne life, is called tenant for terme of his life”—i.e. tenant for life—“and he which holdeth for terme of another’s life, is called tenant for terme of another man’s life”—i.e. tenant *pur autre vie* (Litt., s.56; see thereon Co. Litt. 41B).

Though an estate *pur autre vie* is one of freehold (Litt., s.57), yet it was not an “estate of inheritance” within Dower Act 1833 (c.105) s.2; nor, where it was severed from the inheritance, e.g. by a possible entail, was it “equal to an estate of inheritance in possession” within the same section (*Re Michell* [1892] 2 Ch. 87).

PURCHASE. Speaking technically, a person acquires by “words of purchase” and is a “purchaser” when he obtains title in any other mode than by descent or devolution of law (Litt., s.12; Co. Litt. 18B; FEARNE CONT. REM. 79; Termes de la Ley; Jacob; *Weeks v Birch*, 69 L.T. 759); a devisee under a will is accordingly a purchaser in law (see further WATSON EQ. (2ND EDN), 201, 202). Cp. LIMITATION. See BY PURCHASE; PURCHASER.

Property “passing” on death which is exempt from estate duty if passing upon “a bona fide purchase from the person under whose disposition the property passes”, s.3 of the Finance Act 1894 (c.30), does not, in that exemption, include a policy on a husband’s life or the moneys payable under it at his death and which, by a post-nuptial settlement, he has settled for the benefit of his wife for life and afterwards upon other trusts, and which policy he had by the settlement covenanted to keep up and did keep up agreeably to such covenant (*Att-Gen v Dobree* [1900] 1 Q.B. 442). See also *Re Harmsworth, Barclays Bank v IRC* [1967] Ch. 826.

“Sale or purchase” (the old R.S.C., Ord.14A) meant prima facie a sale or purchase for money, and therefore could not apply to a contract for the transfer of property for which there had been no monetary consideration (*Robshaw Bros v Mayer* [1957] Ch. 125).

“Money applied in purchasing the estate” (Finance Act 1972 (c.41) Sch.9 para.1). Where a term loan is raised to pay off an overdraft it cannot be said that the money is applied in “purchasing” property, notwithstanding that the overdraft had been negotiated by a property developer to finance the purchase and development of properties (*Lawson v Brooks* [1992] S.T.C. 76).

“And the landlord did not become landlord by purchasing the dwelling-house” (Rent Act 1977 (c.42) Sch.15 Case 9). Where parents transferred their interest in a flat to their son in consideration of mutual love and affection but subject to a covenant by the son to keep up mortgage instalments on the flat, the transaction was not one of purchase for the purposes of Case 9 (*Mansukhani v Sharkey* [1992] 24 H.L.R. 600). The payment of money by a person when acquiring a house does not necessarily show that it is being acquired by “purchase”, but, where a plaintiff bought the property from his employer’s estate, even though he did so with money left to him by his employer, it was nonetheless a purchase and the plaintiff became a landlord by purchase (*Amaddio v Dalton* [1991] 23 H.L.R. 332).

“Purchase or provide”: see PROVIDE.

Stat. Def., Administration of Estates Act 1925 (c.23) s.36; Land Charges Act 1925 (c.22) s.20; Law of Property Act 1925 (c.20) s.205; Land Charges Act 1972 (c.61) s.17, Sch.4 para.20; Finance Act 1982 (c.39) s.53(3).

See BONA FIDE; BUY; BY PURCHASE; OPTION; PURCHASE FOR VALUE; PURCHASED; PURCHASER; SALE.

PURCHASE (OF LAND). Stat. Def., Agriculture (Miscellaneous Provisions) Act 1944 (c.28) s.7(3).

PURCHASE AND RESALE ARRANGEMENTS. Stat. Def., Corporation Tax Act 2009 s.501.

PURCHASE MONEY. The purchase money for property is the price to be paid for it, whatever be the subject-matter; therefore, if an equity of redemption was contracted to be sold for a sum under £500, the county court had jurisdiction over the contract, under s.67(4) of the County Courts Act 1888 (c.43), although the property was sold subject to a mortgage in excess of that amount (*R. v Birmingham County Court Judge* [1904] 1 K.B. 827). Cp. *Angel v Jay* [1911] 1 K.B. 666, cited VALUE. See also COMPENSATION.

“Purchase money” within the meaning of a trust deed: see *Re Bentley's Yorkshire Breweries Ltd* [1909] 2 Ch. 609.

PURCHASE PRICE. Where there was an agreement for the payment of commission to an estate agent of a percentage of the “purchase price” it was held that the purchase price included not only the cash sum but also the value of the house taken in part exchange (*Connell Estate Agents v Begej* [1993] E.G. 125).

PURCHASED. “Purchased”, in a devise of lands, prima facie means lands, acquired in any other way than by descent; therefore, a devise of lands which the testator has “purchased” will include those he has acquired by exchange (*Doe d. Meyrick v Meyrick*, 2 L.J. Ex. 259).

Though “the property”, in a vendor and purchaser contract, would probably be an insufficient description, yet “property purchased”, e.g. a receipt for a deposit “on property purchased”, is sufficient—“property”, in that connection, meaning real property (*Shardlow v Cotterill*, 20 Ch. D. 90, followed in *Plant v Bourne* [1897] 2 Ch. 281, cited THE). Cp. BALANCE.

Interest “purchased or provided by the deceased”: see *Att-Gen v Murray* [1904] 1 K.B. 165, cited PROVIDED; *Att-Gen v Pearson* [1924] 2 K.B. 375.

In the expression “interest . . . purchased or created” (Landlord and Tenant Act 1954 (c.56) s.30(2)) “purchased” has its popular meaning of buying for money, as in the Rent Acts, and not the technical legal meaning of acquisition otherwise than by descent or escheat, and therefore where a surrender by operation of law brought about the acquisition of an interest it was not a “purchase” within the subsection (*HL Bolton (Engineering) Co v TJ Graham & Sons* [1957] 1 Q.B. 159). A head lease acquired with other property for a money consideration was “purchased” within the meaning of this section, even though the contract did not apportion any of the money price to the lease itself (*Lawrence v Freeman, Hardy & Willis* [1959] 1 Ch. 731).

Commission on all goods “purchased”: see BOUGHT.

“Purchased manure”: see MANURE.

“Purchased with money provided by Parliament”: see PARLIAMENT.

See PURCHASE.

PURCHASED

PURCHASED LIFE ANNUITY. Stat. Def., Income Tax (Trading and Other Income) Act 2005 (c.5) s.423.

PURCHASER. In *Powell v Cleland* [1948] 1 K.B. 262, the Court of Appeal drew attention to the differences that are to be found in the definition of the word “purchaser” in the several Property Acts of 1925—differences not to be found in the conveyancing legislation, which was in force prior to the coming into operation of the 1925 Code.

Law of Property Act 1925 (c.20) s.183: includes a mortgagee (*District Bank v Luigi Grill* [1943] Ch. 78).

For the purpose of the Bankruptcy Act 1914 (c.59) s.42, a person may be a purchaser for valuable consideration although he has not given money or physical property; the release of an effective right or the compromise of an effective claim may be sufficient: see *Re Pope* [1908] 2 K.B. 169. Cp. *Re Macdonald* [1920] 1 K.B. 205, where wife held not to be a purchaser for valuable consideration; *Re Charters* [1923] B. & C.R. 94. Where there is a partial substitution of one trust asset for another the trustees are not purchasers for valuable consideration (*Re Macadam* [1950] 1 All E.R. 303). A wife who in good faith is the transferee of property owned by her husband, who later becomes bankrupt, the transfer being in consideration of the wife indemnifying the husband in respect of further liability in connection with the property, is not a “purchaser for valuable consideration” within the meaning of s.42 (*Re Windle (A Bankrupt), Ex p. Trustee of the Property of the Bankrupt v The Bankrupt* [1975] 1 W.L.R. 1628). A wife who, shortly after petitioning for divorce, compromised her bona fide claim for ancillary relief by accepting an agreed sum from the net proceeds of sale of the matrimonial home, was a “purchaser for valuable consideration” within s.42, even though no interest in property was transferred and the consideration provided was not measurable in money (*Re Abbott (A Bankrupt), Ex p. The Trustee of the Property of the Bankrupt v Abbott (P.M.)* [1982] 3 W.L.R. 86).

“Prospective purchaser” is a person who has the question of purchase genuinely in prospect of contemplation, although he may never advance to the stage of becoming a purchaser (*Drewery & Drewery v Ware-Lane* [1960] 1 W.L.R. 1204; [1960] 3 All E.R. 529).

A purchaser who acted with deception was not a purchaser in good faith and therefore did not come within the definition of purchaser in s.205(1) (xxi) of the Law of Property Act 1925 (c.20) (protection for purchaser from mortgagee) (*Corbett v Halifax Building Society* [2003] 1 W.L.R. 964, CA).

“Purchaser . . . for money or money’s worth”: see MONEY’S WORTH.

Stat. Def., Administration of Estates Act 1925 (c.23) ss.41 and 55; Land Registration Act 1925 (c.21) ss.3 and 73; Land Charges Act 1925 (c.22) s.20; Law of Property Act 1925 (c.20) s.205 (see also ss.199 and 200); Settled Land Act 1925 (c.18) s.117; Law of Property Act 1969 (c.59) s.24(3); Land Charges Act 1972 (c.61) s.17 Sch.4 para.20; Finance Act 1975 (c.7) s.51; Restrictive Trade Practices Act 1976 (c.34) ss.10(2), 19(2); Housing Act 1980 (c.51) s.92; Capital Transfer Act 1984 (c.51) s.272.

See PURCHASE; PAYEE; MAKING DEFAULT.

PURCHASER INTRODUCED BY US. The expression “a purchaser introduced by us” in a sole estate agency agreement mean a person who becomes a purchaser as a result of the introduction (*Foxtons Limited v Bicknell* [2008] EWCA Civ 419).

PURE. Butter is “pure” though it has the addition of a little salt, or (per Ridley J.) boracic acid added for the same reason as salt; and in a warranty between two

tradesmen that the butter sold by the one to the other is “pure”, the question is, was it “pure” in the sense in which that word is used in the trade (*Roose v Perry*, 44 S.J. 503).

Pure “new milk”: see *Robertson v Harris* [1900] 2 Q.B. 117, cited WRITTEN WARRANTY.

“Pure personalty”, “impure personalty”, for the purpose of a charitable bequest: see *Beaumont v Oliveira*, 4 Ch. 309, cited CHARITY; *Re Holmes*, 63 L.T. 477; Tudor Char. Trusts (5th edn).

“Pure and wholesome water” (Water Works Clauses Act 1847 (c.17) s.35): see *Milnes v Huddersfield*, 11 App. Cas. 511.

See ADULTERATED.

PURGE. For discussion of what it means to purge a contempt, see *Harris v Harris* [2002] 2 W.L.R. 747, CA.

PURIFY. To “purify” an article, *semble*, is to remove from it foreign impurities, and is not the same thing as to “refine” it (*Colonial Sugar-Refining Co v Att-Gen*, *Victoria* [1901] A.C. 544, cited REFINE).

PURLIEU. “‘Purlieu’ is all that ground which is neare any forrest, which being made forrest by Henry the Second, Richard the First, or king John, were by perambulations granted by Henry the Third, severed again from the same” (*Termes de la Ley*, citing *Manwood*, Pt 2, Ch.20). See further Cowel.

“Purlieu containeth such grounds which Hen. 2, Ric. 1, or King John, added to their ancient forests over other mens grounds, and which were disafforested by force of the Statute of Carta de Foresta, cap. 1, and cap. 3, and the perambulations and grants thereupon” (4 Inst. 303). “As to rights of common in respect of purlieu, see *R. v Rodley*, Hard. 437; *Jenning v Rocke*, Palm. 93” (Elph. 616, 617).

“Purlie man, is he that hath lands within the purlieu, and being able to dispend 40 shillings by the yeare of freehold, is upon these two points licensed to hunt in his owne purlieu” (*Termes de la Ley*, citing *Manwood*, Pt 1, 151 and 177; 1 Jac., c.27). See further Cowel.

PURLOIN. “The words ‘purloin, embezzle’ (Poor Law Amendment Act 1834 (c.76), s.97) seem to point to absolute criminality” (per Coleridge J., *Carpenter v Mason*, 10 L.J.M.C. 1, cited WILFUL WASTE). See EMBEZZLE.

PURPORT. When validity is given to anything “purporting” to be done in pursuance of a power, a thing done under it may have validity though done at a time when the power would not be really exerciseable (*Dicker v Angerstein*, 3 Ch. D. 600). In that case it was held that the proviso, following conditional powers of sale in a mortgage, that a “sale purporting to be made in pursuance” of the powers shall be valid as regards purchasers, enables the mortgagee to confer a good title on a bona fide purchaser even though the security be satisfied. In the corresponding proviso in the statutory power of sale, the phrase for “purporting” is “professed exercise” (Conveyancing Act 1881 (c.41) s.21(2)). Cp. Law of Property Act 1925 (c.20) s.104(1); PROVIDED ALWAYS.

Writing “purporting” to be a will: see NATURE; *Re Broad* [1901] 2 Ch. 86.

“Purporting”, as regards a criminal offence—e.g. engraving a note “purporting” to be a bank note (s.16 of the Forgery Act 1861 (c.98))—*semble*, means “pretending”. “An instrument purports to be that which, on the face of the instrument, it more or less accurately resembles. The definition of ‘purporting’ is the same whether applicable to the whole or to a part of an instrument. There must be a resemblance more or less accurate” (per Coleridge J., *R. v Keith*, 24 L.J.M.C. 110), which case shows that proof

PURPOSE

that a forged engraving “purports” to be what it is not is furnished by comparing it with a genuine one. See further *Hare v Copland*, 13 I.C.L.R. 426; PRETEND.

“Purports to preclude the tenant from making an application” in s.38(1) of the Landlord and Tenant Act 1954 (c.56) means “has the effect of” (*Joseph v Joseph* [1966] 3 W.L.R. 631). An agreement which, although it did not by its terms prevent a tenant from making an application for a new tenancy, did in fact operate to prevent him doing so, “purported to preclude” him within the meaning of this section (*Allnatt London Properties v Newton* [1981] 2 All E.R. 290).

“Purports to be made . . . by a person” (European Communities Act 1972 (c.68) s.9(2)). A contract can purport to be made on behalf of a company which both parties to the contract know to be not yet formed, and only about to be formed; so that a person who purports to contract on behalf of a company not yet formed can, under this section, be personally liable (*Phonogram v Lane* [1981] 3 All E.R. 182).

See PURSUANCE.

PURPOSE. Liberty to call to deliver, “or for any other purpose whatsoever” would probably not justify a call to take in cargo (per Herschell C., *Glynn v Margetson* [1893] A.C. 351).

“For the purposes of an organisation” (Rating and Valuation (Miscellaneous Provisions) Act 1955 (c.9) s.8(1)(a)) see *Polish Historical Institution v Hove Corp* (1963) 61 L.G.R. 438, cited PURPOSES.

“For the purposes of a club” (Rating and Valuation (Miscellaneous Provisions) Act 1955 (c.9) s.8(1)(c)): see *Parker v Ealing BC* [1960] 1 W.L.R. 1398).

Temporary purpose: see *Inland Revenue Commissioners v Cadwalader*, 42 S.L.R. 117, cited TEMPORARY. See also RAILWAY PURPOSE.

As to the purpose of a conspiracy, see *Crofter Handwoven Tweed Co v Veitch* [1942] A.C. 435, cited OBJECT, para.(6).

“Purpose” (Official Secrets Act 1911 (c.28) s.1(1)) means an intent to do a particular act or acts and not the state of mind in which those acts are done (*Chandler v DDP* [1962] 3 W.L.R. 694).

“Purpose of re-laying or repairing the permanent way” (Prevention of Accident Rules 1902 (No.616) r.9). A re-layer inspecting the line to determine what lengths of rail will be required for re-laying is not working for the “purpose of re-laying or repairing” within the meaning of this rule (*Judson v British Transport Commission* [1954] 1 W.L.R. 585). But the tightening of cross belts or fish plates comes within the rule (*Reilly v British Transport Commission* [1957] 1 W.L.R. 76; *Cade v British Transport Commission* [1959] A.C. 256).

The words “purpose of smoking cannabis” (Dangerous Drugs Act 1965 (c.15) s.5), “denote a purpose which is other than quite incidental or casual or fortuitous; they denote a purpose which is or has become either a significant one or a recognised one though certainly not necessarily an only one” (per Lord Morris in *Sweet v Parsley* [1970] A.C. 132).

In deciding whether there is a fraud on a power the appointee’s “purpose and intention” must be ascertained as a matter of substance and not solely by analysing the effect of the appointment though, of course, that is important: see *Re Burton’s Settlements*, *Scott v National Provincial Bank* [1955] Ch. 82.

“For any other purpose”: see *Re Norris* [1883] W.N. 35; OTHER.

“Provide funds . . . for the purpose of the settlement” (Income Tax Act 1952 (c.10) s.411(2); now Income and Corporation Taxes Act 1970 (c.10) s.454(3)). Where funds

had been provided for a settlement there was a strong inference that they were provided for the "purpose" of that settlement unless the purpose was shown to be for something else. It was not necessary that there should be a motivating intention to benefit those interested under the settlement, and it was irrelevant that the person providing the funds was probably too young to have the legal capacity as well as the knowledge to form any intention with regard to the "purpose" for which they were provided (*IRC v Mills* [1975] A.C. 38).

"Purposes of tax" (Taxes Management Act 1970 (c.9) s.99). Where, in a company's accounts, stock figures were adjusted by carrying stock to reserve to level out the profits of the company's business, which otherwise would show significant fluctuations from year to year, it was held that, although the statutory accounts were incorrect, the adjustments were not made for "any purposes of tax" within the meaning of this section (*Lord Advocate v Ruffle*, 1979 S.L.T. 212).

"Purposes of a private household" (Race Relations Act 1976 (c.74) s.4(3)). The employment of a chauffeur to drive the chairman of a company on company business, and also to drive the chairman and his wife or his wife alone as required, was not "employment for the purposes of a private household" within the meaning of this section (*Heron Corp v Commis* [1980] I.C.R. 713).

"The purposes for which it was acquired" (Land Compensation Act 1973 (c.26) s.29(1)(c)). Where land was compulsorily acquired for the purposes of council housing development and was then, after the abandonment of the scheme, in process of being cleared so that it could be sold for private development, it was at that time still held for "the purposes for which it was acquired" within the meaning of this section (*Greater London Council v Holmes* [1986] 1 All E.R. 739).

"Larger purpose" (Companies Act 1985 (c.6) ss.153(1)(a), 2(a)). A narrow definition should be applied to these words so as to prevent the mischief at which the provisions of this part of the Act were aimed, namely allowing an individual to gain control of a public company by using the company's own funds (*Brady v Brady* [1988] 2 W.L.R. 1308).

"Purpose of any business" (Value Added Tax Act 1983 (c.55) s.14(3(b)). Where, in order to achieve the necessary standard of fitness for his career as an actor, the appellant joined a health club, it was held that his subscription was incurred for a "business" purpose within the meaning of this section (*Anholt (Anthony) v Customs and Excise Commissioners* [1989] V.A.T.T.R. 297). Legal expenses incurred by a taxable person arising out of court proceedings wholly unrelated to his business use were not incurred "for the purpose of any business" within the meaning of this section (*Customs and Excise Commissioners v Rosner*, *The Times*, January 4, 1993).

"Purposes of a government department": see OCCUPY; OCCUPIED.

"For the purpose of restricting or regulating the development or use of the land": see RESTRICT.

(Employment Protection (Consolidation) Act (c.44) s.23(1)(b).) "For the purposes of" within the meaning of s.23(1)(b) connoted an object which the employer desired or sought to achieve so that an insistence on managerial experience before promotion to a manager's post an employee who was full-time trade union official was not action taken "for the purpose of" preventing him from continuing on his trade union activities (*Department of Transport v Gallecher* [1994] I.C.R. 967).

A new building which was physically connected with the existing church could be described as being built "for the purpose of enlarging the church" so that it did not

PURPOSE

contravene the Disused Burial Grounds Act 1884 (c.72) s.3 (*Re St. Michaels and All Angels, Tettenhall Regis* [1996] 2 W.L.R. 385).

“In the first place, it is clear that when using the word ‘purpose’ their focus was not on the subjective, they were not referring to motives or intentions. ‘Purpose’ is here being used in the sense of the objective ‘aim’, to use Lord Hope’s word. And the role of ‘intention’ is limited. What was being emphasised is that bad faith, deception, improper motives or other forms of arbitrary behaviour may have the effect that what would otherwise not be a deprivation of liberty is in fact, and for that very reason, a deprivation. This is a very different proposition from some general suggestion that good intentions can render innocuous what would otherwise be a deprivation of liberty. And for that proposition there is, in my judgment, no support at all in anything said in Austin. . . . Earlier on, I distinguished between three things, reason, purpose and motive, explaining what I meant by reference to the facts of *R v Jackson* [1891] 1 QB 671 and the facts of the hypothetical case with which I contrasted it. ‘Reason’, in the sense in which I have used it, accords with Parker J’s use of the same word in *Re MIG and MEG*. ‘Purpose’, in the sense in which I have used it, accords with their Lordships’ use of the same word in Austin, referring to the ‘aim’. In this context, properly used and properly understood, both ‘reason’ and ‘purpose’ (or, synonymously, ‘aim’) are objective. They are to be contrasted with the subjective sense in which, in this context, words such as ‘motive’ and ‘intention’ tend to be used. When used in these senses, it is legitimate, in my judgment, in determining whether or not there is a deprivation of liberty, to have regard both to the objective ‘reason’ why someone is placed and treated as they are and also to the objective ‘purpose’ (or ‘aim’) of the placement. Subjective motives or intentions, on the other hand, are relevant only in the limited circumstances contemplated in Austin. An improper motive or intention may have the effect that what would otherwise not be is in fact, and for that very reason, a deprivation of liberty. But a good motive or intention cannot render innocuous what would otherwise be a deprivation of liberty. Putting the same point another way, good intentions are essentially neutral. At most they merely negative the existence of some improper motive or intention. That is all. I can illustrate the point by returning to the example of the wife suffering from dementia. I suggested that the reason why our hypothetical husband was implementing the regime I described was because his wife has dementia, that his purpose was to safeguard and protect his wife against some of the adverse consequences of her dementia, and that his motive was to further his wife’s best interests, acting out of love and, it may be, his sense of obligation as a husband. Applying the foregoing analysis, both the reason and the purpose are relevant to the question of whether there is any deprivation of liberty. The husband’s beneficent motive, on the other hand, is relevant only because it negatives the existence of any improper purpose or any malign, base or improper motive—for example, a desire to punish or humiliate or to avoid shame or embarrassment—that might, if present, turn what would otherwise be innocuous into a deprivation of liberty.” (*Cheshire West and Chester Council v P*. [2011] EWCA Civ 1257.)

“Particular purpose”: see ADEPTION; MAKE KNOWN; USE AND BENEFIT; PARTICULAR.

“Special purpose”: see SPECIAL.

“Purposes of a business”: see BUSINESS.

See LAWFUL PURPOSE; MAIN PURPOSE; PAROCHIAL PURPOSE; POST OFFICE; PUBLIC PURPOSES; WHOLLY AND EXCLUSIVELY.

PURPOSE CONNECTED WITH. “19. A central issue is thus whether, under s.22(2)(b), that part of the Heysham/M6 development which does not fall within schedule 5 to the Order is a highway to be ‘constructed for a purpose connected with a highway for which the Secretary of State is (or will be) the highway authority.’

20. Much time and energy was devoted in argument to the issue of what the words ‘a purpose connected with’ mean. . . .

22. Ultimately, however, I conclude that: i) ‘A purpose connected with’ are ordinary English words which can and should be given an ordinary English meaning. ii) The meanings of common words and phrases, particularly (as in this case) those which are conceptually abstract, may well vary in accordance with the statutory context in which those words are to be found. Divorcing interpretation from context may tend to mislead rather than to inform. iii) There is no ambiguity, obscurity or absurdity about the language of the section which entitles me to have regard to *Hansard* (in any event, I did not find the passages which were brought to my attention to be of particular help). iv) If Parliament had intended to elaborate further upon the meaning of these words then it could easily have done so. I see no benefit, in the circumstances of this case, in attempting to put a gloss on the words themselves. In *Re Sevenoaks Stationers (Retail) Ltd* [1991] Ch 164, Dillon LJ, referred to judicial statements on section 6 of the Company Directors Disqualification Act 1986 which he described as ‘ordinary words of the English language’, at p.176F: ‘Such statements may be helpful in identifying particular circumstances in which a person would clearly be unfit. But there seems to have been a tendency, which I deplore, on the part of the Bar, and possibly also on the part of the official receiver’s department, to treat the statements as judicial paraphrases of the words of the statute, which fall to be construed as a matter of law in lieu of the words of the statute. The result is to obscure that the true question to be tried is a question of fact—what used to be pejoratively described in the Chancery Division as “a jury question”.’ In my view, these observations apply with equal force to the wording of s.22(2)(b) of the 2008 Act.

23. In the circumstances of this case I am entirely satisfied that the dual carriageway which is intended to fall within the auspices of Lancashire as highway authority (‘the Lancashire highway’) was indeed constructed for a purpose connected with the highway in respect of which the defendant is intended to be the highway authority (‘the defendant’s highway’).” (*R. (on the application of Gate) v Secretary of State for Transport* [2013] EWHC 2937 (Admin).)

PURPOSES. Right of way “for all purposes”: see *Harris v Flower*, 91 L.T. 816, cited *WAY*.

“The purposes of agriculture, and other rural industries”: see hereon *Gilchrist v Lanarkshire*, 35 S.L.R. 663, cited *AGRICULTURAL*.

“For the purposes of agriculture” (Town and Country Planning Act 1947 (c.51) s.12) referred to the production processes of agriculture and not to the buying and selling of agricultural products (*Hidderley v Warwickshire CC*, 61 L.G.R. 266).

“Services used for the purposes of” a building operation (Defence (General) Regulations 1939 reg.56A(4)) do not include architect’s services (*Young v Buckles* [1952] 1 K.B. 220).

“Purposes of private gain or purposes of any commercial undertaking” (Small Lotteries and Gaming Act 1956 (c.45) s.1(1)): see *Bishopbriggs and District Rate-payers’ Association v Lanark CC*, cited *PRIVATE GAIN*.

PURPRESTURE

“Purposes of the hospital” (National Health Service Act 1946 (c.81) s.61): see *Ministry of Health v Fox* [1950] Ch. 369; also *Re Dean's Will Trusts* [1950] 1 All E.R. 882.

“For the purposes of an organisation” (Rating and Valuation (Miscellaneous Provisions) Act 1955 (c.9) s.8(1)(a)) meant the purposes for which the organisation existed, and not the purposes of benefit to the organisation (*Polish Historical Institution v Hove Corp*, 61 L.G.R. 438).

“For the purposes of a club” (Rating and Valuation (Miscellaneous Provisions) Act 1955 (c.9) s.8(1)(c)). A playing field leased to a club for evening and weekend use only was not occupied “for the purposes” of that club (*Parker v Ealing BC* [1960] 1 W.L.R. 1398).

“Purposes of science, literature or the fine arts exclusively” (Scientific Societies Act 1843 (c.36) s.1). The question whether a society was instituted for such purposes is to be determined by reference to the purposes defined by its constitution, rather than to the purposes actually pursued in practice (*Institute of Fuel v Morley* [1955] 1 Q.B. 317; *Institute of Mechanical Engineers v Cane* [1960] 3 W.L.R. 978).

“Purposes of technical education” (Income Tax Act 1952 (c.10) s.140(1), now Income and Corporation Taxes Act 1970 (c.10) s.133(1)) may be for particular individuals rather than technical education generally (*Wickwar v Berry* [1963] 1 W.L.R. 1062).

“Purposes” of betting: see USING.

“Mining purposes”: see MINING.

“Necessary for the purposes”: see NECESSARY.

“For the purposes of the trade”: see WHOLLY AND EXCLUSIVELY.

“Purposes of trade or manufacture”: see PART.

“Used for the purposes of public traffic”: see RAILWAY.

“Trade purposes”: see DOMESTIC.

See ALL INTENTS AND PURPOSES; DOMESTIC; GENERAL PURPOSES; MILITARY PURPOSES; POLICE; PUBLIC PURPOSE; PURPOSE; RELIGIOUS; SANITARY; SEWAGE; SHIPPING PURPOSES; VOID.

PURPRESTURE. “By ‘purpresture’ is meant, in its present acceptation, an encroachment upon the Crown, either upon part of the demesne lands, or upon the high roads, rivers, forts, or streets; and the difference between purprestures and nuisances consists in this—that where the *jus privatum* of the Crown is invaded, it is a purpresture; but where the *jus publicum* is violated, it is a nuisance” (Dan. Ch. Pr. (8th edn), 1381, citing 2 Inst. 38, 272; Harg. Law Tracts, 84, 87; see further Co. Litt. 277B; Termes de la Ley; Cowel; MANWOOD; Elph. 617).

See NUISANCE; INTRUSION.

PURPRISUM. “A close or enclosure; also the whole compass of a mannor” (COWEL).

PURSER. “Purser” of the stannaries: Stat. Def., Stannaries Act 1868 (c.19) s.2; Stannaries Act 1887 (c.43) s.2.

PURSUANCE. Notice of action is in many instances required to be given prior to commencing proceedings for things done “in pursuance”, or “under or by virtue”, or “in execution” of a statute. In strictness, anything not authorised by a statute cannot be “in pursuance” or “under or by virtue” of it, whilst if authorised it would need no other protection. But if effect were given to such a construction it would altogether do away with the protection intended to be given; accordingly it was held that if any public or

private body or person, charged with the execution of an Act of Parliament, or of any public duty or authority (Public Authorities Protection Act 1893 (c.61) s.1), honestly intended to put the law in motion and really and not unreasonably believed in the existence of facts, which, if existent, would have justified his acting and acted accordingly, his conduct would be "in pursuance" or "under or by virtue" of the statute under which he believed he was acting, although he erred in such belief. The question whether there was in fact reasonable ground for such belief was a subordinate question and one very material to be pressed on the minds of the jury; but the presence or absence of such reasonable ground could only be relied on for the purpose of determining whether the belief was bona fide or not (*Hermann v Seneschal*, 32 L.J.C.P. 43, and cases there cited; *Roberts v Orchard*, 33 L.J. Ex. 65; *Judge v Selmes*, L.R. 6 Q.B. 724; *Chamberlain v King*, L.R. 6 C.P. 474, sub nom. *King v Chamberlain*, 40 L.J.C.P. 273; *Agnew v Jobson*, 47 L.J.M.C. 67; *Waterhouse v Keen*, 4 B. & C. 200; *Midland Railway v Withington*, 11 Q.B.D. 788; *Cree v St. Pancras* [1899] 1 Q.B. 693; *Hughes v Buckland*, 15 L.J. Ex. 233; *Lea v Facey*, 19 Q.B.D. 352; but see *Thomas v Stephenson*, 22 L.J.Q.B. 258). See further Rosc. N.P. (17th edn), 1104, 1121, 1128, 1130–1134.

An omission to do, in pursuance of a statute, is on the same line as regards notice of action as an actual thing done (*Wilson v Halifax*, L.R. 3 Ex. 114; *Joliffe v Wallasey*, L.R. 9 C.P. 62).

As to when (apart from the question of notice of action) a thing is done "in pursuance" of an Act, see *Armstrong v Bowdidge*, 16 C.B. 358.

"In pursuance or in consequence thereof" (Local Government Act 1929 (c.17) s.123): an officer transferred from one authority to another was transferred through something done in pursuance of the Act (*Dodds v Durham CC* [1950] 2 All E.R. 1090).

In pursuance of an arbitration under the Workmen's Compensation Acts, see *Ocean Coal Co v Davies*, 96 L.J.K.B. 364.

Cp. "formed in pursuance" of an Act of Parliament: see *Re Ilfracombe Building Society*, 70 L.J. Ch. 72, cited FORMED.

"In pursuance of any enactment" (Employment Protection Act 1975 (c.71) Sch.11 para.3). The remuneration of ambulancemen agreed under the Whitley Council rules was held to be remuneration fixed "in pursuance of" an enactment (*R. v Central Arbitration Committee, Ex p. North Western Regional Health Authority* [1978] I.C.R. 1228).

"In pursuance of" (Agriculture (Miscellaneous) Provisions Act 1976 (c.55) s.18(4)(f)) means "in exercise of the authority conferred" (*Saul v Norfolk CC* [1984] 3 W.L.R. 84).

"In pursuance of a contract" (Finance Act 1981 (c.35) s.111(7)). Expenditure by the taxpayer company in reimbursing its agents in respect of costs incurred as a result of contracts made by them as agents of the taxpayer was made "in pursuance of" the original contract between the taxpayer and its agents, and not in pursuance of the contracts made by the agents (*IRC v Mobil North Sea* [1987] 1 W.L.R. 1065).

"In pursuance of any instrument made under any enactment" (Race Relations Act 1976 (c.74) s.41(1)(a)). These words are to be construed in the narrow sense in that they refer only to acts done in the necessary performance of an express obligation contained in the instrument. They do not extend to acts done in the exercise of a power or discretion granted by the instrument (*Hampson v Department of Education and*

PURSUANT

Science [1990] 3 W.L.R. 42). The General Medical Council, in exercising its power to test the knowledge of English of an applicant for registration, pursuant to the Medical Act 1983 (c.54), was held not to have been acting "in pursuance of . . . any enactment" within the meaning of s.41(1)(a) (*General Medical Council v Goba* [1988] I.R.L.R. 425).

"In pursuance of a contract" (Leasehold Reform Act 1967 (c.88) s.3(1), as amended by Housing Act 1980 (c.51) Sch.21 para.3(a)). Where a contract did no more than permit the mesne landlord to underlet it could not be said that an underletting was made "in pursuance" of that contract so as to remove it from the ambit of the Act (*Proma v Curtis* [1989] 2 E.G. 74).

See CARRYING INTO EXECUTION; EXECUTION OF STATUTORY POWERS; IN EXERCISE; PURPORTING.

PURSUANT. Agreement "pursuant to the Highways Acts" (Stamp Act 1891 (c.39) Sch.): see *Cumberland CC v Inland Revenue Commissioners*, 78 L.T. 679.

"Conduct may be said to be 'pursuant to' a specified course if that course is followed by compulsion, or by voluntary adoption or perhaps by accident" (*Groves v Groves* [1944] S.A.S.R. 187).

A resale of goods by a liquidator of a company is not a resale "pursuant to an order of any court" within the meaning of s.25(2)(b) of the Restrictive Trade Practices Act 1956 (c.68), merely by reason of the fact that the liquidator was originally appointed by the court (*Mackintosh (John) & Sons v Baker's Bargain Stores*, L.R. 5 R.P. 305).

PURSUE. The power of an owner of bees at common law to pursue a swarm of bees does not confer a right to pursue them on to another man's land without his consent (*Kearry v Pattinson* [1939] 1 K.B. 471).

"Whom he is pursuing" (Police and Criminal Evidence Act 1984 (c.60) s.17(1)(d)). For a constable to have the right to enter and search premises for the purpose of recapturing someone he is pursuing the pursuit must be continuous and almost contemporaneous with the entry into the premises. "Pursuing" for the purposes of this section connotes a chase (*D'Souza v DPP* [1992] 1 W.L.R. 1073).

PURVIEW. "Purview" is a French word signifying a gift or grant, and *pourveu que* a condition; Sir Edward Coke often uses it for that part of an Act of Parliament which begins with 'Be it enacted' (Cowel).

PUT. To create a thing, or to "put" a thing into a certain state or condition, is a very different thing from to "keep" it up, or to "keep" it in that state or condition; an agreement to "do" or to "put", can only be broken once, but an agreement to "keep" is a continuing one; e.g. an agreement to "forthwith repair", or "forthwith put in repair", is broken once for all (*Coward v Gregory*, L.R. 2 C.P. 153; see FORTHWITH), so, of an agreement to build a house within a stated period (*Jacob v Down* [1900] 2 Ch. 156, cited KEEP); but an agreement to "keep" such house in repair is continuing, and involves, e.g. the practical revival of a waived agreement to build, because you cannot "keep" in repair that which is non-existent (*Jacob*).

PUT ASHORE. See LANDED; ON SHORE.

PUT IN. Document "put in" (Summary Procedure Act 1864 (c.53) s.16) meant "produced in evidence" (per Lord M'Laren, *Marshall v Phyn*, 38 S.L.R. 175).

A discretion statement may be "put . . . in evidence in open court" within r.28(5) of the Matrimonial Causes Rules 1957 (SI 1957/619) without having to be formally proved by the party putting it in (*Sperman v Sperman* [1967] 1 W.L.R. 705).

PUT IN FORCE. An execution was “put in force” (Companies Act 1862 (c.89) s.163) by the Sheriff’s actual entry into possession under it (*Re London & Devon Biscuit Co*, L.R. 12 Eq. 190); “but where an execution is perfected by seizure before the commencement of the winding-up, a sale after the commencement is not such a ‘putting in force’”; but see Companies Act 1985 (c.6) s.523; *Re Great Ship Co, Parry’s Case*, 33 L.J. Ch. 245; see further *Re Opera* [1891] 3 Ch. 260. See hereon PROCEEDING; DEBTOR.

Giving a notice to treat was not “to put in force” compulsory powers within Lands Clauses Consolidation Act 1845 (c.18) s.16 (*Guest v Poole, etc. Railway*, L.R. 5 C.P. 553, cited COMPULSORY POWERS). See *North Eastern Railway v Tynemouth*, 9 B. & S. 630.

PUT IN PRACTICE. As regards a patent: see USE.

PUT INTO. See WRITING.

PUT INTO CIRCULATION. See CIRCULATION.

PUT OFF. To “put off” a bargain for sale of goods may mean to postpone its completion, or to procure a resale of the goods to a third person; the first is the more ordinary meaning, but which is the meaning in a particular case is for the jury (*Thornton v Charles*, 11 L.J. Ex. 302).

See UTTER.

PUT ON BOARD. See TAKE ON BOARD; ON BOARD.

PUT ON THE MARKET. “31 The expression ‘put on the market’ in the EEA used in Article 7(1) of [First Council Directive (EEC) 89/104—trade marks] constitutes a decisive factor in the extinction of the exclusive right of the proprietor of the trade mark laid down in Article 5 of that directive... 32 It must therefore be given a uniform interpretation in the Community legal order... 33 The wording alone of Article 7(1) of the Directive does not make it possible to determine whether goods imported into the EEA or offered for sale in the EEA by the proprietor of the trade mark are to be regarded as having been ‘put on the market’ in the EEA within the meaning of that provision. The interpretation of the provision in question must therefore be sought with regard to the scheme and objectives of the Directive... 44 The answer to the first question must therefore be that Article 7(1) of the Directive must be interpreted as meaning that goods bearing a trade mark cannot be regarded as having been put on the market in the EEA where the proprietor of the trade mark has imported them into the EEA with a view to selling them there or where he has offered them for sale to consumers in the EEA, in his own shops or those of an associated company, without actually selling them.” (*Peak Holding AB v Axolin-Elinor AB* (C-16/03) ECJ.)

Stat. Def., Housing Act 2004 (c.34) s.149.

PUTCHER. A “putcher”, in the definition of fixed engine for the purpose of the Salmon Fishery Acts, “is a conical or funnel-shaped basket made of 20 straight rods fastened together at intervals by four or five hoops of decreasing size, each rod about half an inch or an inch thick and about five feet long and running lengthways from end to end of the basket. The length or depth of the basket is about five feet, the diameter about 20 inches at the mouth (where one end of each rod is fastened to the longest hoop at intervals of three inches) and two or three inches at the other end. The framework is loose or open, and the mouth and end are open so as to offer as little resistance to the tide as possible” (*Holford v George*, L.R. 3 Q.B. 643).

PUTCHER

Close season for putts and putchers commences on September 1 in each year and ends on the following May 1, both inclusive (Salmon Fishery Law Amendment Act 1879 (c.26) s.2); on which see *Prosser v Cadogan*, 94 L.T. 777. See now Salmon and Freshwater Fisheries Act 1923 (c.16) s.26.

PUTCHER RANK. “1. The claimant, Mr Nigel Mott, is the leasehold owner, jointly with the interested party Mr Merrett, of a right to fish for salmon at Lydney in the estuary of the River Severn using a putcher rank, that is, an array of 650 basket-like traps into which adult salmon swim as they make their way from the sea to spawn. The putcher is a very old fishing method and traditionally was made of woven wood, but the claimant’s are now made of steel. The claimant’s putcher fishery is a commercial operation; in the years prior to the decisions challenged the claimant’s evidence is that he caught an average of 600 salmon per year with an approximate value of £60,000 and that the fishery represents his full time occupation and livelihood, supporting his family and that of Mr Merrett.” (*Mott, R. (on the application of) v Environment Agency* [2015] EWHC 314 (Admin).)

PUTRID. “Putrid solid matter” (Rivers Pollution Prevention Act 1876 (c.75) s.2): see SOLID MATTER.

PYKE. See GORE.

PYROTECHNIC LIGHT. See *The Orion* [1891] P.307.

A petrol bomb comprising a bottle of petrol and a wick is an explosive substance within the meaning of s.3(b) of the Explosive Substances Act 1883 (c.3), which produces a “pyrotechnic effect” within the meaning of s.3 of the Explosives Act 1875 (c.17) (*R. v Bouch* [1982] 3 W.L.R. 673).

Q

QUACK. A “quack” is one who pretends to a skill or knowledge which he does not possess; therefore, to call a practising medical man a “quack”, or a “quack-salver”, or an “empiric”, or a “mountebank”, is slander per se (Odgers, 84, citing *Allen v Eaton*, Rol. Ab. 54; *Goddart v Haselfoot*, Rol. Ab. 54); so, to say of an optician that he is “a quack in spectacle secrets” (*Keyzor v Newcomb*, 1 F. & F. 559). But there are other meanings of the word “quack”, such as a person who, however skilled, lends himself to a medical imposture; see *Dakhyl v Labouchere*, 77 L.J. Ch. 729, also cited FAIR COMMENT.

As to what will be fair comment justifying such expressions, see *Hunter v Sharp*, 3 F. & F. 983, cited PUBLIC INTEREST.

QUADRANTATA TERRÆ. 14 of an acre (Cowel; Elph. 598).

QUADRUGATA TERRÆ. “A team of land which may be till’d with four horses” (Cowel).

QUALIFICATION. Where a stated qualification, e.g. of a director of a company, is made a condition precedent, an appointment is void if the qualification is not possessed (*Jenner’s Case*, 7 Ch. D. 132).

Director shall “acquire his qualification”: see *Re Bolton* [1894] 3 Ch. 356; *Re Anglo-Austrian Printing Co, Ex. p. Isaacs* [1892] 2 Ch. 158; *Re Bread Supply Association*, 62 L.J. Ch. 376; *Re Hercynia Copper Co* [1894] 2 Ch. 403; *Molineaux v London, etc., Insurance* [1902] 2 K.B. 589; *Re London & South Western Canal Co*, 80 L.J. Ch. 234. See Companies Act 1948 (c.38) s.182. See NATURE.

“The same qualification” (s.4 of the Parliamentary Voters Registration Act 1843 (c.18)) meant the same property (*Burton v Gery*, 17 L.J.C.P. 66).

“Cease to hold” qualification: see CEASE.

“Future qualification”: see FUTURE.

“Household qualification”: see HOUSEHOLD.

“Lodger qualification”: see LODGER.

“Nature of qualification”: see NATURE.

Stat. Def., Veterinary Surgeons Act 1966 (c.36) s.27; Industrial Relations Act 1971 (c.72) s.24(7); Employment Protection (Consolidation) Act 1978 (c.44) s.57; Medical Act 1983 (c.54) s.55.

See PROHIBITED; GENUINE OCCUPATIONAL QUALIFICATION.

Stat. Def., Qualifications Wales Act 2015 s.56.

QUALIFIED. An apprentice bound to a freeman of the Watermen’s Company, or to a registered barge-owner, was a “qualified” apprentice within s.54 of the Watermen’s and Lightermen’s Amendment Act 1859 (c. cxxxiii) (*Gosling v Newton* [1895] 1 Q.B. 793).

“Specially qualified” dentist: see *Panhaus v Brown*, 68 J.P. 435, *Emslie v Paterson*, 34 S.L.R. 634, *Bellerby v Heyworth* [1910] A.C. 377, and *Blain v King* [1918] 2 K.B. 30, all cited DENTIST; cp. “specially qualified” veterinary practitioner.

QUALIFIED

A qualified fee is a fee less absolute in duration than a fee simple, and is spoken of by Lord Coke as synonymous with a base fee, its most familiar example being a fee tail (Co. Litt. 1B).

“Qualified persons” (Copyright Act 1956 (c.74) s.3(2)): see *Merchant-Adventurers Ltd v Grew (M.) & Co* [1972] Ch. 242.

“Qualified pilot”: see *The Carl XV* [1892] P. 324; *Stafford v Dyer* [1895] 1 Q.B. 566; Merchant Shipping Act 1894 (c.60) s.586. See Pilotage Act 1913 (c.31) s.17.

Qualified ship’s officers: see *Werner v Bergensk Dampskibsselskab*, 42 T.L.R. 265.

A statement that a person was “specially qualified” as a veterinary practitioner (s.17(1) of the Veterinary Surgeons Act 1881 (c.62)) did not necessarily require a representation that he was possessed of some kind of diploma; a representation of having had special training to use veterinary skill was within the section; therefore, it was an offence within the section for a shoeing smith to advertise his place as a “veterinary forge” (*Royal College of Veterinary Surgeons v Robinson* [1892] 1 Q.B. 557; see further *Royal College of Veterinary Surgeons v Collinson* [1908] 2 K.B. 248; *Att-Gen v Churchill’s Veterinary Sanatorium* [1910] 2 Ch. 401; *Royal College of Veterinary Surgeons v Kennard* [1914] 1 K.B. 920); *secus*, of “veterinary chemist” if used in the sense of preparing veterinary medicines for sale (*Royal College of Veterinary Surgeons v Groves*, 9 T.L.R. 483, cited VETERINARY). See further *Brown v Whitlock*, 67 J.P. 451, cited ADDITION; cp. *Panhaus v Brown*, 68 J.P. 435.

“Qualified in full for any capital allowance” (Finance Act 1968 (c.44) Sch.12 para.1(2), now Capital Gains Tax Act 1979 (c.14) s.127(1)(b)). Machinery which was sold having never been used, and in respect of which capital allowances had been withdrawn retrospectively, had not “qualified” for any capital allowance within the meaning of this regulation (*Burman v Westminster Press* [1987] S.T.C. 669).

A Canadian can be a “qualified person” for the purposes of s.3(2) of the Copyright Act 1956 (c.74) (*Milltronics v Hycontrol* [1990] F.S.R. 273).

“Qualified indorsement”: see SANS RECOURS.

See DISQUALIFIED DULY; OFFICER; QUALIFICATION. Cp. ELIGIBLE.

QUALIFIED PERSON. A non-practising barrister is not a qualified person for the purposes of s.84 of the Immigration and Asylum Act 1999 (*R. v K.* [2008] EWCA Crim 1900).

QUALIFY. An expert witness was said to “qualify” when he read up, or otherwise mastered, the details of the particular case on which he was to give evidence. As to the allowance for his work, see the old R.S.C. Ord.65 r.9.

QUALIFYING EARNINGS. Stat. Def., Pensions Act 2008 s.13.

QUALIFYING WORKER. (Rent (Agriculture) Act 1976 (c.80).) An agricultural mechanic was employed in agricultural (*McPhail v Greensmith* [1993] E.G.L.R. 228).

QUALITY. “Condition” and “quality” contrasted: see *Compania Naviera Vascongada v Churchill* [1906] 1 K.B. 237, cited GOOD ORDER.

“Quality marks” in a bill of lading: see *Grant v Norway*, 20 L.J.C.P. 93; *Cox v Bruce*, 18 Q.B.D. 147.

As to what is a fraudulent misrepresentation of the quality of an article, see *R. v Ardley*, L.R. 1 C.C.R. 301, and cases there cited.

Quality (s.2 of the Food and Drugs Act 1928 (c.31)) meant commercial quality: see *Anness v Grivell* [1915] 3 K.B. 685; see also *Hunt v Richardson* [1916] 2 K.B. 446; *Bowker v Woodroffe* [1928] 1 K.B. 217.

"Nature or quality of medicinal products" (Medicines Act 1968 (c.67 s.93(7)(b)). "Quality" applies not only to a commercial quality or grade, but could also mean the medicine's character, characteristics or an attribute (*R. v Roussel Laboratories; R. v Good* (1989) 88 Cr.App.R. 140).

Under Sale of Goods Act 1893 (c.71) s.62(1), "'quality of goods' includes their state or condition".

"Character or quality" of goods, as regards a trade mark: see CHARACTER; FANCY WORD.

Lands of a "like quality": see LIKE.

"Similar quality": see SIMILAR. "Similar in style and quality": see STYLE.

Stat. Def., Agricultural Produce (Grading and Marking) Act 1928 (c.19) s.7; Sale of Goods Act 1979 (c.54) s.61; Supply of Goods and Services Act 1982 (c.29) s.18.

See DYE; NATURE; QUANTITY AND QUALITY UNKNOWN; SORT.

QUAMDIU. "*Quamdiu* also is a word of limitation, for if a man grant a rent out of the mannor of D, *Quamdiu* the grantor shall bee dwelling upon the mannor, this is good, or *quamdiu se bene gesserit*. And so by these words, *donec, quousque, usque ad, tamdiu, ubicunque*" (Co. Litt. 235A).

"The word 'quamdiu' implies a duration, without interruption or intermission. If Blackacre is granted to A *quamdiu* B suffers J.N. to enjoy Whiteacre, if B enter into Whiteacre the grant of Blackacre ceaseth. Now, though B suffer J.N. to re-enter and re-enjoy Whiteacre, yet the estate by the *quamdiu* is determined. And so, if lands be granted to A and his heirs *quamdiu* B hath heirs of his body, if B die without heir of his body, the estate ceaseth; and though the wife of B be enseint and after have a son, yet it shall not revive. That is the express case put by Yelverton in *Poole and Needham's Case*, in 6 Jac. B.R. 149; for it was a collateral determination which, being once interrupted, shall not be set on foot again. The true reason is, the *quamdiu* is a word of limitation of a continued uninterrupted estate. And indeed to have an estate cease and rise again, the proper words should be *toties quoties*, and not *quamdiu* which, as I said, implies a continued estate" (per Bridgman C.J., *Holland v Fisher*, Orl. Bridg. 202, 203). See TOTIES QUOTIES.

QUANTITY AND QUALITY UNKNOWN. See *Tully v Terry*, L.R. 8 C.P. 679; *The Ida*, 32 L.T. 541; see further *Compania Naviera Vascongada v Churchill* [1906] 1 K.B. 237, cited GOOD ORDER; CONTENTS UNKNOWN; CLEAN BILL OF LADING.

QUANTITY SURVEYOR. A quantity surveyor is a person "whose business consists in taking out in detail the measurement and quantities, from plans prepared by an architect, for the purpose of enabling builders to calculate the amount for which they could execute the plans" (per Morris J., *Taylor v Hall*, 4 I.R. C.L. 476). There is no privity between him and the builder whose tender is accepted; accordingly, he cannot recover his fees from such builder (*Taylor v Hall*), unless the builder's liability is shown by the arrangement between the parties or (probably) by a custom in the trade (*North v Bassett* [1892] 1 Q.B. 333); nor, on the other hand, can he be sued by such builder for negligence in preparing the bill of quantities (*Priestley v Stone*, 4 T.L.R. 730). Nor is there, necessarily and without express evidence of such a relationship, any privity between the quantity surveyor and the building owner, for the employer of the quantity surveyor is generally the architect; therefore, the builder has, generally, no claim against the building owner for the negligence preparation of the bill of quantities (*Scrivener v Pask*, L.R. 1 C.P. 715).

QUANTUM MERUIT. *Quantum meruit* is the reasonable amount to be paid for services rendered or work done, when the price therefore is not fixed by contract (3 Bl. Com. 161). See hereon *Cutter v Powell*, 6 T.R. 320; *Sumpter v Hedges* [1898] 1 Q.B. 673. See further *Hart v Porthgain Harbour Co* [1903] 1 Ch. 690; *Lodder v Slowey* [1904] A.C. 442.

QUARANTINE. See QUARENTINE.

QUARENTENA TERRÆ. “A furlong: Co. Litt. 5B; Spelm. It is also used in the secondary meaning of a furlong or shot (a division in the common field); SEEBOHM, ENG. VIL. COMM. 4; and for that reason, we suppose, ‘some hold that by that name land may be demanded’; Co. Litt. 5B” (Elph. 617). See QUARENTINE; STADIUM.

QUARENTINE. “‘Quarentine’ is where a man dyeth seised of a manour place, and other lands, whereof the wife ought to be endowed, then the woman may abide in the manour place, and there live of the store and profits thereof of the space of 40 dayes, within which time her dower shall be assigned, as it appeareth in Magna Charta, cap. 6” (Termes de la Ley). See further Cowel.

“‘Quarentine’ is also the space of 40 days wherein any person coming from foreign parts infected with the plague, is not permitted to land or come on shore” (Cowel).

“‘Quarentine’ also signifies a furlong” (Cowel). See also QUARENTENA TERRÆ.

QUARRELS. “As to this word (*querelas*), it is to be known that quarrels extend not only to actions as well real as personal, as it is held in 9 E. 44 a; but also to causes of actions and suits, as it is held in 39 Hen. 6, 9 b. So that, by release of all ‘quarrels’, not only actions depending in suit, but causes of action and suit also are released . . . And this word *querela* is derived a *querendo*, unde etiam *querens*, who is the plaintiff; and quarrels, controversies, and debates, are *synonima*, and of one and the same signification” (*Altham’s Case*, 8 Rep. 153 a, 153 B). See further Co. Litt. 292A; Termes de la Ley, Quarels.

QUARRY. “The word ‘quarry’ is in the *Encyclopædia Metropolitana* stated to be derived from the French word ‘quarrière’, and the derivation is followed by this description: ‘In the Latin of the lower ages, *quadratarius* was a stone-cutter, *quimarmora quadrat*, and hence ‘quarrière’, the place where he quadrates or cuts the stone in squares, the place where the stone is cut in squares, generally a stone-pit’—clearly, therefore, referring to a place upon or above, and not under, the ground” (per Turner L.J., *Bell v Wilson*, 1 Ch. 303); and, therefore, distinct from a “mine” (*Darvill v Roper*, 24 L.J. Ch. 779). “The authorities, both at law and in equity, concur in this, that if the operations carried on are in fact mining operations and not surface operations—whatever may be the material gained, whether it be slate, as here, limestone, as in *R. v Sedgley* (9 L.J.O.S.M.C. 61, see MINE), or clay, as in *R. v Brettell* (1 L.J.M.C. 46, see MINE)—the criterion is not the material obtained, but the mode in which it is obtained” (per Malines V.C., *Cleveland v Meyrick*, 37 L.J. Ch. 128). See further, as to the difference between a quarry and a mine, Mac-Swinney on Mines, Quarries and Minerals (5th edn).

Under the Quarries Act 1894 (c.42) s.1, a “quarry” meant “every place (not being a mine) in which persons work in getting slate, stone, coprolites, or other minerals, and any part of which is more than 20 feet deep”. Furnace slag was not a “mineral”, nor is a heap of it a “quarry” within this definition (*Scott v Midland Railway*, 13 T.L.R. 398), but gravel was such a “mineral”, and so, probably, was sand (*Scott v Midland Railway and Great Northern Railway* [1901] 1 K.B. 317); “the widest meaning must be given

to" the phrase "other minerals" as used in the definition of "quarry" in s.1 of the Quarries Act 1894 (c.42) (per Darling J., *Scott*).

Stat. Def., Mines and Quarries Act 1954 (c.70) s.180(2).

See DELF; MINE; "open mine", under OPEN.

QUARRY OR MINE. See MINE

QUARTER. A quarter measure of eight bushels (s.15 of the Weights and Measures Act 1878 (c.49)), i.e. 64 GALLONS. The Weights and Measures Act 1963 (c.31) Sch.1 Pt V defines it as 28 pounds, i.e. a quarter of a hundredweight.

Stat. Def., International Finance, Trade and Aid Act 1977 (c.6) Sch.1 para.4; Export Guarantees and Overseas Investment Act 1978 (c.18) s.15; Finance Act 1982 (c.39) s.126; Value Added Tax Act 1983 (c.55) s.48; Capital Transfer Act 1984 (c.51) s.63.

QUARTER OF A YEAR. "A 'quarter of a year' containeth, by legall computation, 91 dayes" (Co. Litt. 135B). Cp. HALF A YEAR.

QUARTER SESSIONS. "Court of Quarter Sessions": as to this court, see per Cairns C., *Walsall v London & North Western Railway*, 4 App. Cas. 30, cited ORDER.

"Quarter Sessions Borough": see Local Government Act 1888 ss.35 and 100, on which see *Re Dover and Kent CC* [1891] 1 Q.B. 389.

QUARTERLY. Where an annual rent, salary, or (semble) any other annual payment, has to be made "quarterly", without more, that means, by four equal portions on the usual quarter days (*Vanaston v Mackarly*, 2 Lev. 99). See further HALF YEARLY; cp. YEARLY.

A provision for a "quarterly account" is insufficient to make a guarantee a continuing one: see *Melville v Hayden*, 3 B. & Ald. 593.

QUARTZ. "Quartz mining": see *Chappelle v The King* [1904] A.C. 133, cited MINING.

QUASH. "To overthrow or annul" (Cowel), e.g. to quash an indictment for defect on its face, or a rate for illegality.

"Quash" (Criminal Appeal Act 1907 (c.23) s.4(3)) meant that the sentence quashed was rendered null and void from the substitution of the new sentence, not ab initio (*Hancock v Prison Commissioners* [1960] 1 Q.B. 117).

A conviction is quashed only when an appeal is allowed in full, whether or not a retrial is ordered, and not when a lesser verdict is substituted (*R. (Christofides) v Home Secretary* [2002] 1 W.L.R. 2769, Q.B.D.).

QUASI-JUDICIAL. As to the functions of the Minister of Health under the Housing Act 1936 (c.51), see *B. Johnson & Co (Builders) Ltd v Minister of Health* [1948] L.J.R. 155.

QUASI-LOAN. Stat. Def., Companies Act 2006 s.199.

QUAY. "Is a convenient place fitted on the shore for the loading and unloading of vessels; we commonly call it a wharfe" (Cowel, *Kay*); but "'quay' is a wider term than 'wharf'; it is almost tantamount to 'street'" (per Crampton J., *Belfast v Tomb*, Smythe 437). See hereon *Vernon v Castle*, 127 L.T. 748.

"Any quay or other place" (Import, Export and Customs Powers (Defence) Act 1939 (c.39) s.3(1)(b)): the words "or other place" were not to be construed ejusdem generis with quay (*Emerson v Woods* [1942] N.I. 118; *Roe v Hemmings* [1951] 1 K.B. 676).

"Quay or dock": see DOCK.

"Wharf or quay": see WHARF.

See DOCK; FACTORY; EX QUAY OR WAREHOUSE.

QUE. “All prescription must be either in a man and his ancestors, or in a man and those whose estate he hath (4 Rep. 32); which last is called prescribing in a que estate” (2 Bla. Com. 264), “a phrase taken from the Norman-French, *tous ceux que estate il ad*” (Herbert on Prescription, 68). The first of these prescriptions is termed a prescription in the person; the second is called a prescription in a que estate, which in plain English means a right or privilege claimed by prescription as annexed to and going along with particular lands (Co. Litt. 113B, 121A; *Austin v Amhurst*, 7 Ch. D. 692; *Constable v Nicholson*, 32 L.J.C.P. 240; Shelford’s Real Property Statutes (10th edn), 25, 26). See hereon Williams on Rights of Common, Lecture 2; *Chesterfield v Harris* [1908] 2 Ch. 397, affirmed House of Lords, sub nom. *Harris v Chesterfield*, 55 S.J. 686.

QUEEN. By s.30 of the Interpretation Act 1889 (c.63) references to the Sovereign reigning at the time of the passing of an Act or to the Crown shall, unless the contrary intention appears be construed as references to the Sovereign for the time being. It follows that upon the accession to the throne of Queen Elizabeth II, “King’s Bench” became “Queen’s Bench”, “King’s Counsel” “Queen’s Counsel”, “King’s Enemies” “Queen’s Enemies”, “King’s peace”, “Queen’s peace”, “King’s Regulations” “Queen’s Regulations”, etc. See CROWN; HIGH TREASON; MAJESTY; PRIVATE ESTATES; QUEEN’S ENEMIES; AS THE QUEEN DIRECTS.

QUEEN ANNE’S BOUNTY. Stat. Def., s.12(16) of the Interpretation Act 1889 (c.63).

“The Queen Anne’s Bounty Acts 1706 to 1870”: see Sch.2 to the Short Titles Act 1896 (c.14).

The Queen Anne’s Bounty and the Ecclesiastical Commissioners were united under the name of Church Commissioners by the Church Commissioners Measure 1947 (No.2) s.1.

See FIRST FRUITS.

QUEEN’S ENEMIES. “The words ‘the Queen’s enemies’ relate, not to robbers—for the consequences of whose attacks carriers are liable, unless their liability has been varied by statute or express contract—but in the case of an English ship, and, in other cases to the enemies of the Sovereign of the shipowners” (1 Maude & P. 351, citing *Russel v Niemann*, 34 L.J.C.P. 10; *The Heinrich*, L.R. 3 A. & E. 435; *The Teutonia*, L.R. 4 P.C. 171; see also *The San Roman*, L.R. 3 A. & E. 583). Pirates probably, are not included herein (1 Maude & P. 351, n (h) 487); but see Carver (9th edn). See ENEMY; RESTRAINTS OF KINGS.

THE QUEEN’S PEACE.

“Finally, in an article entitled ‘Murder Under the Queen’s Peace’ [2008] Crim LR 541, Professor Michael Hirst traces the ambit of the meaning of the term ‘the Queen’s peace’ in the offence of murder. He concludes that the phrase essentially goes to jurisdiction and the ambit of the offence of murder under English law, but may be of relevance to the killing of a victim in a time of war.

33. The law is now clear. An offender can generally be tried for murder wherever committed if he is a British subject, or, if not a British subject, the murder was committed within England and Wales. The reference to ‘the Queen’s peace’, as originally dealt with in the cases to which we have referred, went essentially to jurisdiction. Although the Queen’s Peace may play some part still in the elements that have to be proved for murder as regards the status of the victim (and it is not necessary to examine or define the ambit of that), it can only go to the status of the victim; it has

nothing whatsoever to do with the status of the killer. The argument was completely hopeless. We have set out at some length why it was hopeless; it should never have been advanced. We dismiss this ground of appeal as entirely misconceived." (*R. v Adebolajo* [2014] EWCA Crim 2779.)

QUEEN'S REGULATIONS. See REGULATION.

QUEEN'S WAREHOUSE. See WAREHOUSE.

QUESTION. "Question" (National Insurance Act 1965 (c.51) s.64(1); National Insurance (Industrial Injuries) Act 1965 (c.52) s.35(1)). Disputes as to which class a person belongs for the purposes of these Acts are questions within the meaning of these sections (*Ministry of Social Security v Bryant (John) and Co* (1968) 1 W.L.R. 1260).

"Question arising out of, or connected with, the contract" (s.9 of the Vendor and Purchaser Act 1874 (c.78)—see Law of Property Act 1925 (c.20) s.49) includes "whatever could be done in chambers upon a reference as to title under a decree where the contract was established" (*Re Burroughes and Lynn*, 5 Ch. D. 601); for the cases carrying out this principle, see Greenwood's Real Property Statutes (2nd edn), 206–208; see further *Re Jackson and Woodburn*, 37 Ch. D. 44. Cp. COMPENSATION.

"Question in the action": see *Norris v Beazley*, 2 C.P.D. 80; *Horwell v General Omnibus Co*, 3 Ex. D. 365; *Byrne v Brown*, 22 Q.B.D. 657.

"No questions shall be asked", in an advertisement for return of stolen property (s.102 of the Larceny Act 1861 (c.96)): see *Mirams v Our Dogs Co* (1901) 2 KB. 564, cited PROPERTY.

"If any question arises" (s.21(1) of the Workmen's Compensation Act 1925 (c.84)): see *Field v Longden* [1902] 1 KB. 47, followed in *Kennedy v Caledon Co* 43 S.L.R. 687. "Question" here did not mean dispute: see *Hopper v Vickers Ltd*, 14 B.W.C.C. 229; *Baldwin v Electric, etc., Co*, 12 B.W.C.C. 305.

"The question", in the latter part of s.41 of the Regulation of Railways Act 1868 (c.119), meant only the question of compensation (*Re East London Railway*, 24 Q.B.D. 507).

"Difference . . . or any other question" (s.19 of the Regulation of Railways Act 1873 (c.48)) was confined to questions of account, compensation, and remuneration; and did not extend to the violation of an enactment (*Postmaster General v Highland Railway*, 2 Ry. & Can. Tr. Gas, 34). "Question or difference . . . arising out of the termination of the tenancy", under s.16 of the Agricultural Holdings Act 1923 (c.9): see *Simpson v Batey*, 93 L.J.K.B. 919. Cp. Agricultural Holdings Act 1948 (c.63) s.77.

"Question arising out of the reason stated in the notice to quit" (Agriculture (Control of Notices to Quit) Regulations 1948 (No.190) reg.4). The question raised by a tenant defending the landlord's action for possession as to whether the holding was in fact required for a use other than agriculture was not such a "question" (*Jones v Gates* [1954] 1 W.L.R. 222).

"Question arises" (Criminal Procedure (Insanity) Act 1964 (c.84) s.4(1)). If neither prosecution, defence nor judge raise a preliminary point as to fitness to plead no "question arises" as to that within the meaning of this section, even though the judge had had doubts and had adjourned for a medical report and called a medical witness (*R. v McCarthy* [1967] 1 Q.B. 68).

"Question litigated of importance to some class of persons", as regards s.119 of the County Courts Act 1888 (c.43): see *Day v Day*, 85 L.J.K.B. 917.

“Question of law” (s.14 of the Judicature Act 1881 (c.68)) included the question as to whether a judge, not on the election petitions rota, had power to amend a petition (*Shaw v Reckitt* [1893] 2 Q.B. 59). “Point of law” (s.58 of the Court of Probate Act 1857 (c.77)): see *Copeland v Simister* [1893] P.16 Cp. POINT OF SUBSTANCE.

Action in which title “shall be in question” (s.58 of the County Courts Act 1846 (c.95)) meant where the title should really and bona fide be in question as distinguished from the possibility of its coming in question under a general plea (*Latham v Spedding* 17 Q.B. 440). See further TITLE; *Lilley v Harvey* 17 L.J.Q.B. 357; *Mountney v Collier*, 22 L.J.Q.B. 124; *Emery v Barnett*, 27 L.J.C.P. 216. Cp. VALUE; ANNUAL VALUE.

To bring “into question” the rights of the public under s.1(1) of the Rights of Way Act 1932 (c.45), the landowner must challenge them by some means sufficient to bring it home to the public that he is doing so. To turn hack strangers on isolated occasions would not be enough (*Fairey v Southampton CC* (1956) 2 Q.B. 439). Nor was the ploughing up of a path across a field (*Owen v Buckinghamshire CC*, 55 L.G.R. 373).

See BROUGHT INTO QUESTION; DISPUTE; FACT; MATTER.

QUI TAM. See POPULAR ACTION.

QUIA EMPTORES. The statute of *Quia Emptores*—so called from its commencing words—is 18 Edw. 1, c. 1; thereby was sanctioned the full and free alienation of FEE SIMPLE lands, but subinfeudation was forbidden and stopped.

For a relatively modern example of the construction and application of this statute, see *Mertens v Hill* [1901] 1 Ch. 853, cited ANCIENT DEMESNE.

Cp. Statute *de Donis*, under WESTMINSTER.

QUIA TIMET. A quia timet action is an action brought to prevent a wrong that is apprehended: see hereon *Att-Gen v Manchester* [1893] 2 Ch. 87. See also *Ascherson v Tredegar Dry Dock Co* [1909] 2 Ch. 401, distinguished in *Bradford v Gammon* [1925] 1 Ch. 132.

QUICK. A woman is “quick with child” when she has conceived (per Gurney B., *R. v Wycherley*, 8 C. & P. 264); the learned judge added, “‘with quick child’ is when the child has quickened”.

QUID PRO QUO. Is the CONSIDERATION of a contract—the giving of one thing of value for another thing of value (Cowel).

QUIET ENJOYMENT. The question as to whether or not a covenant for quiet enjoyment has been broken is “in every case a question of fact whether the quiet enjoyment of the land has or has not been interrupted; and where the ordinary and lawful enjoyment of the land is substantially interfered with by the acts of the lessor (or, other covenantor?), or those claiming under him, the covenant appears to us to be broken, although neither the title to the land nor the POSSESSION of the land may be otherwise affected” (per Willes J., *Dennett v Atherton*, L.R. 7 Q.B. 316). “I take that as an advance upon the older authorities. I accept it and act upon it” (per Lindley L.J., *Robinson v Kilvert*, 41 Ch. D. 88). But a mere “temporary inconvenience which does not interfere with the estate or title or possession” is not a breach (per Lindley L.J., *Manchester, Sheffield & Lincolnshire Railway v Anderson* [1898] 2 Ch. 394). Observe that *Dennett v Atherton* was considered in *Sanderson v Berwick-upon-Tweed*, 13 Q.B.D. 547, and that those two cases and *Manchester, Sheffield & Lincolnshire Railway v Anderson* were considered in *Tebb v Cave* [1900] 1 Ch. 642; but *Tebb v Cave* was doubted by Romer and Cozens-Hardy L.JJ. in *Davis v Town Properties*

Corporation [1903] 1 Ch. 797. See also *Browne v Flower*, 80 L.J. Ch. 181; *Harmer v Jumbil Nigeria Tin Areas Ltd* [1921] 1 Ch. 200.

This covenant does not embrace tortious acts (*Hayes v Bickerstaffe*, Vaugh. 118; *Nash v Palmer*, 5 M. & S. 379), unless expressly extended, e.g. to persons “pretending to claim” (*Chaplin v Southgate*, 10 Mod. 384), or unless such acts are those of the covenantor, his heirs or executors or administrators (Elph. 485), or of a specified person (Elph. 486). Nor does it guarantee unrestricted user (*Spencer v Marriott*, 1 B. & C. 457; *Dennett v Atherton*, above), or freedom from unforeseen consequences (*Harrison v Muncaster* [1891] 2 Q.B. 680, which case was applied by Bray J., in *Williams v Gabriel* [1906] 1 K.B. 155).

It has been said that the covenant for quiet enjoyment can only extend to protect the purchaser from incumbrances and defects in the title of which he has no notice (per Malins V.C., *Hunt v White*, 37 L.J. Ch. 326); but that case is overruled, and the covenant extends—if its terms are wide enough—to defects of title appearing on the conveyance itself (*Page v Midland Railway* [1894] 1 Ch. 11).

See hereon Elph. 481–493; Touch. 166, 170–172; 36 S.J. 180, 42 S.J. 143; *Anderson v Oppenheimer*, 5 Q.B.D. 608; see further *Jaeger v Mansions Consolidated Co*, 87 L.T. 690; DEFAULT; DEMISE; INTERRUPTION; NEGLIGENCE OR DEFAULT; PEACEABLY AND QUIETLY; THROUGH.

QUIET IN HARNESS. “Quiet in harness”, in a warranty, refers rather to the behaviour than to the health of the horse (per Pollock B., *Bush v Freeman*, 3 T.L.R. 449).

QUIETUS. “‘Quietus’, acquitted—is a word used by the clerk of the pipe and auditors in the exchequer in their acquittances or discharges given to accomptants” (Cowel), e.g. a sheriff, at the end of his year, carries in his bill of cravings (i.e. claim for expenses) and also accounts for what he may have received for the Crown, and gets his quietus.

For the protection of purchasers of land against Crown debts, a quietus may be registered under s.9 of the Judgments Act 1839 (c.11).

QUILLET. A synonym for a hamlet: see preamble to 39 Eliz., c.25.

QUINQUENNIAL PERIOD. Railways (Valuation for Rating) Act 1930 (c.24) s.12(5): held to mean the quinquennial period during which the railway valuation roll became effective (*Strand v Bath & Portland Stone Firms* [1941] 2 K.B. 227).

QUIT. “Wrongfully quitting the boat”, by a seaman or apprentice (Merchant Shipping Act 1894 (c.60) s.376(1)(c)) was defined as “quitting the boat, without leave, after her arrival in port and before she is placed in security”.

See NOTICE TO QUIT.

QUITCLAIM. This is a corruption of “quiet claim” (Litt. s.445; see REMISE). “Quite clayme, *quieta clamantia*”, is a release or acquitting of a man for any action that he hath, or might, or may have against him. Also a quitting of ones claime or title” (Cowel).

QUIT RENT. “Rents of assize are the certain established rent of the freeholders and ancient copyholders of a manor, and which cannot be departed from—those of freeholders are frequently called chiefs rents, and both sorts are indifferently denominated quit rents, because thereby the tenant goes quit and free of all other services” (Woodf. 405, citing 2 Bl. Com. 42; GILB. RENTS, 38; Co. Litt. 143B,

Hargrave's fn. 5). See further Litt. s.117; Cowel, *Quit Rent*; COPINGER AND MUNRO ON RENTS, 17, 18; *North v Strafford*, 3 P. Wms. 151 n; *Howitt v Harrington* [1893] 2 Ch. 497.

A quit rent cannot be created since the statute quia emptores, but it may be claimed by prescription, and "in *Doe d. Whittick v Johnson* (Gow 173), it is said that where rents have been paid for a long series of years 'without variation', the presumption is that they are quit rents, and the words 'without variation' are of the essence of the proposition, for a quit rent must be invariable" (per Kekewich J., *Foljambe v Smith's Brewery Co*, 73 L.J. Ch. 725).

See further *Weller v Stone*, 54 L.J. Ch. 497; *Doe d. Lord v Crago*, 17 L.J.C.P. 263; *Smith v Widlake*, 47 L.J.C.P. 282; Law of Property Act 1925 (c.20).

QUO WARRANTO. "Is a writ that lies against him that usurps any FRANCHISE or liberty" (Cowel) or office. See hereon Short & Mellor's *Crown Office Practice*. Cp. PROHIBITION.

Informations in *quowarranto* were abolished by Administration of Justice (Miscellaneous Provisions) Act 1938 (c.63) s.9, which gave a power to grant an injunction to restrain the exercise of powers in an office to which a man is not entitled: see R.S.C. Ord.59 r.11.

QUOAD. The "stock" answer "*Quoad ultra* no admission is made", in reply to a pursuer's averment of fact within the knowledge of the defenders is bad pleading (*Callaghan v J&A Weir Ltd*, 71 Sh. Ct. Rep. 312).

QUORUM. Where a quorum of directors or shareholders is prescribed, that means, imperatively, that no business shall be transacted unless the prescribed number, at least, be present (*Re Alma Spinning Co*, 50 L.J. Ch. 171; sub nom. *Bottomley's Case*, 16 Ch. D. 681; following *Kirk v Bell*, 16 Q.B. 290, and criticising *Thames Haven, etc., Co v Rose*, 12 L.J.C.P. 90); see further *Hemans v Hotchkiss Co* [1899] 1 Ch. 115.

Where a quorum is to be fixed but none has actually been fixed: see *Re Bank of Syria* [1900] 2 Ch. 272; [1901] 1 Ch. 115.

In order that there may be a duly constituted quorum of the directors of a company "it is necessary that they should act conjointly, and as a board of directors. I do not say that they are bound to meet at any particular place or any particular time; but they are bound to be together, as a board, at the time the thing is ordered to be done" (per Bramwell B., *D'Arcy v Tamar, etc., Railway*, L.R. 2 Ex. 158; see on this case *Re Great Northern Salt Works*, 44 Ch. D. 472).

A director of a company is not entitled to join in forming a quorum for the consideration of matters on which he is not entitled to vote (*Re Greymouth-Point Elizabeth Railway* [1904] 1 Ch. 32). See also *Re North Eastern Insurance Co* [1919] 1 Ch. 198.

"Quorum of members" (Companies Act 1862 (c.89) Table A art.37) meant "a quorum of effective members, i.e. members qualified to take part in, and to decide upon, questions brought before the meeting"; and such a quorum had to be present when such questions were being decided; merely being present at the beginning of the meeting was not sufficient (*Henderson v Louttit*, 21 Rett. 674). See Companies Act 1948 (c.38) Table A art.53.

As to quorum at first meeting of creditors, see *Re Thomas*, 55 S.J. 482. See Companies Winding-up Rules 1949 r.138.

In a commission, to be “of the quorum” means that the persons so indicated are sine qua non to the proceedings (Cowel). (The quorum clause no longer appears in the commission of the peace.)

QUOTE. “‘Quotation’ is capable of different meanings according to the connection in which it is used, but there is a common idea underlying them all, that of notation or enumeration. The things quoted may be passages, in an author, the prices of specific articles, or the terms upon which work is to be done . . . A quotation might be so expressed as to amount to an offer to provide a definite article, or to do a certain work, at a defined price. But the ideas of a quotation, and of an offer to sell, are radically different. The difference is well illustrated by *Harvey v Facey*”, cited *LOWEST PRICE* (per Madden J., *Boyers v Duke* [1905] 2 I.R. 624, in which case a correspondence asking for, and giving, a quotation was held not to amount to a contract).

“Quote a rate”: see *TO BOOK*.

“Quotation”: Stat. Def., Electricity Act 1947 (c.54) s.21(8); Transport Act 1947 (c.49) s.17(5); Gas Act 1948 (c.67) s.26(11); Iron and Steel Act 1949 (c.72) s.15(10); Consumer Credit Act 1974 (c.39) s.52; Aircraft and Shipbuilding Industries Act 1977 (c.3) s.37; Capital Gains Tax Act 1979 (c.14) s.155.

“Quoted company”: Stat. Def., Finance Act 1982 (c.39) Sch.9 para.16.

QUOUSQUE. A seizure *quousque* is when a copyholder dies and no person comes in to claim admittance to his tenement as his heir or devisee, then the lord of the manor may seize the tenement until some rightful person does so claim (*Doe d. Bover v Trueman*, 9 L.J.O.S.K.B. 119); but such seizure cannot be made until after three proclamations in the manor court have been made, or a special notice given requiring the proper claimant to come in and be admitted and he has refused to do so (*Beighton v Beighton*, 64 L.J. Ch. 796). This right of seizure may be barred by the lord’s long acquiescence in a neglect to come in and claim (*Ecclesiastical Commissioners v Parr* [1894] 2 Q.B. 420). See further *Walters v Webb*, 39 L.J. Ch. 677.

See *QUAMDIU*.

See *UNTIL*.

R

R&D (and compound expressions). Stat. Def., Income and Corporation Taxes Act 1988 s.837A; Corporation Tax Act 2009 ss.1050–97.

REIT. See REAL ESTATE INVESTMENT TRUST.

RTE COMPANY. Stat. Def., (company formed for purpose of exercising right to collective enfranchisement) s.4A of the Leasehold Reform, Housing and Urban Development Act 1993 (c.28), inserted by s.122 of the Commonhold and Leasehold Reform Act 2002 (c.15).

RTM COMPANY. Stat. Def., (company acquiring right to manage premises) s.71 of the Commonhold and Leasehold Reform Act 2002 (c.15).

RABBITS. See DOMESTIC ANIMAL; GROUND GAME.

RACE. Stat. Def., “includes colour, nationality, ethnic origin and national origin” (Equality Act 2006 s.35).

Stat. Def., Equality Act 2010 s.9.

RACECOURSE. A field used for athletic sports was not converted into a racecourse within s.2 of the Street Betting Act 1906 (c.43), because two horse races were included in the day’s programme: see *Stead v Aykroyd* [1911] 1 K.B. 57.

Land was “used as a racecourse” within the meaning of s.26(3) of the General Rate Act 1967 (c.9) if the extent to which it was used was such that the law could not disregard it as being de minimis. Thus a 13 acre field used one day in the year for Point-to-Point races attended by some 10,000 people with many cars was being “used as a racecourse” within the meaning of this section (*Hayes v Lloyd* [1985] 1 W.L.R. 714). See also *Wimborne and Cranborne RDC v East Dorset Assessment Committee* [1940] 2 K.B. 420.

Stat. Def., Gambling Act 2005 (c.19) s.353.

RACIAL. “On racial grounds” (Race Relations Act 1976 (c.74) s.1(1)). An employer who dismissed a white barmaid for refusing to obey his instructions not to serve coloured customers, was held to have treated her “less favourably” than he treated other employees “on racial grounds” within the meaning of this section (*Zavczynska v Levy* [1979] 1 W.L.R. 125). This case was followed in *Showboat Entertainment Centre v Owens* [1984] 1 W.L.R. 384, where the manager of an amusement centre was dismissed for refusing to carry out his employer’s instruction not to admit blacks.

“Racial discrimination”: Stat. Def., Race Relations Act 1976 (c.74) ss.1–3.

See also ETHNIC.

RACIAL DISCRIMINATION. For criteria to be used in determining whether discrimination is on grounds of race or religion, see *R. (E.) v Governing Body of JFS* [2009] EWCA Civ 626.

RACIAL GROUP. “Racial group” (Race Relations Act 1976 (c.74) s.3(1).) English-speaking Welsh and Welsh-speaking Welsh do not have separate ethnic origins and are not therefore of different “racial groups” within the meaning of this

RACIAL

section. So that refusing to employ a person because she could not speak Welsh was not racial discrimination (*Gwynedd CC v Jones* [1986] I.C.R. 833). Gypsies are a “racial group” within the meaning of this section as being identifiable by reference to their ethnic origins (*Commission for Racial Equality v Dutton* [1989] 2 W.L.R. 17). Rastafarians are not a racial group in that their origins are religious and not ethnic (*Dawkins v Crown Supplier (PSA)* [1993] I.R.L.R. 284). See also ETHNIC.

(Race Relations Act 1976 (c.74) ss.1 and 3). The historic separation of the nations of Scotland and England means that the Scots and the English are “racial groups” defined by reference to national origins. Secondly since neither the Scots nor the English possessed common characteristics of a racial nature they could not comprise a racial group within the meaning of s.3 on the basis of ethnic origins alone (*Northern Joint Police Board v Power* [1997] I.R.L.R. 610).

For the purposes of s.28 of the Crime and Disorder Act 1998 a “racial group” can be described in a non-inclusive as well as an inclusive sense. So the word “foreigner” can be taken as designating a racial group (*DPP v M.* [2004] 1 W.L.R. 2758, Q.B.D.).

“Racial group” (Race Relations Act 1976 (c.74) s.5(2)). In this section “racial group” is to be narrowly construed as one ethnic group and was not satisfied by a group described as “Afro-Caribbean and Asian” (*Lambeth LBC v Commission for Racial Equality* [1989] I.C.R. 641).

For the purposes of s.28(4) of the Crime and Disorder Act 1998 (c.37), “racial group” is a wide concept and need not refer only to a single group distinguished by particular racial characteristics (*R. v Rogers* [2005] EWCA Crim 2863; affirmed [2007] UKHL 8).

RACIAL HATRED. Section 37 of the Anti-terrorism, Crime and Security Act 2001 (c.24) s.20(1) modifies the definition of racial hatred in s.17 of the Public Order Act 1986 (c.64) so as to include hatred against persons outside the United Kingdom. Section 38 of the 2001 Act does the same in relation to the phrase “fear and hatred” in art.8 of the Public Order (Northern Ireland) Order 1987 (SI 1987/463 (NI 7)).

Stat. Def., Public Order Act 1986 (c.64) s.17.

RACIALIST. The term “Paki” can amount to racist abuse (*DPP v Stoke-on-Trent Magistrates’ Court* [2003] 3 All E.R. 1086, Q.B.D.).

RACK-RENT. “Rack rent” meant the full annual valuation of a property (*Ashworth Frazer Ltd v Gloucester City Council* [1997] E.G.C.S. 7).

Stat. Def., Poor Law Amendment Act 1834 (c.76) s.109; Land Drainage Act 1861 (c.133) s.38(3); Public Health Act 1936 (c.49) s.343(1); Public Health (London) Act 1936 (c.50) s.304(1); Tithe Act 1936 (c.43) s.17(3); Housing Act 1957 (c.56) s.39(2); Highways Act 1980 (c.66) s.329; Public Health (Control of Diseases) Act 1984 (c.22) s.74.

RADIO. See LOCAL RADIO STATION.

RADIOACTIVE DEVICE. Stat. Def., Terrorism Act 2006 s.9(4).

RADIOACTIVE MATERIAL. Stat. Def., Terrorism Act 2006 s.9(4).

RADIOACTIVE WASTE. Stat. Def., “means radioactive material in gaseous, liquid or solid form for which no further use is foreseen by the countries of origin and destination, or by a person whose decision is accepted by these countries, and which is controlled as radioactive waste by a regulatory body under the legislative and regulatory framework of the countries of origin and destination” (Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 (SI 2008/3087) reg.3).

RADIUS. The Motor Fuel (Hire Service) Order 1941 permitted a journey within a circle of 15 miles radius, having its centre at the place where the vehicle was normally kept. The word "radius" could not be construed as 15 miles by road (*Langley v Wilson*, 59 T.L.R. 216).

RADMANS; RADCHEMISTRES. See COLEBERTI.

RAG FLOCK. Stat. Def., Public Health (London) Act 1936 (c.50) s.136(6); Rag Flock and Other Filling Materials Act 1951 (c.63) s.35.

RAGGED SCHOOL. Sunday and Ragged Schools, etc. Act 1869 (c.40) s.2: "ragged school" shall mean any school used for gratuitous education of children and young persons of the poorest classes, and for the holding of classes and meetings in furtherance of the same object, and without any pecuniary benefit being derived therefrom except to the teacher or teachers employed". See thereon *Bell v Crane*, L.R. 8 Q.B. 481, cited MAY. Cp. SUNDAY SCHOOL.

RAGS. Rag Flock Act 1911 (c.52) s.1(1): see *Cooper v Smith* [1914] 1 K.B. 253, followed and explained in *Balmforth v Chadburn* [1927] 1 K.B. 663.

RAIL. "Line of rail" has, I think, been held to include land covered by an embankment" (per Erle J., *South Wales Railway v Swansea*, 24 L.J.M.C. 34).

RAILROAD. See *Fletcher v London United Tramways Co* [1902] 2 K.B. 269, and *Adams v Shaddock* [1905] 2 K.B. 859, both cited RAILWAY.

RAILWAY. "Building used for the purposes" of a railway: see PURPOSES.

"Necessary land for making a railway": see NECESSARY.

Stat. Def., Public Utilities Street Works Act 1950 (c.39) s.39; Post Office Act 1953 (c.36) s.43; Factories Act 1961 (c.34) s.176(1); Transport Act 1962 (c.46) s.52(4); Rating Act 1971 (c.39) ss.2(5), 5(6); Highways Act 1980 (c.66) s.329; Transport and Works Act 1992 (c.42) s.67.

See PASSENGER RAILWAY; STREET RAILWAY; THE.

Cp. MARKET GARDEN; LAND COVERED WITH WATER; PROPERTY OTHER THAN LAND.

For an extensive list of earlier authorities see Stroud's Judicial Dictionary, 5th edn.

RAILWAY CARRIAGE. See *Yorkshire Electric Tramways v Ellis* [1905] 1 K.B. 396, cited HACKNEY CARRIAGE.

RAILWAY PASSENGER SERVICE. A service which was unlikely to benefit the travelling public and which was introduced simply to avoid the statutory closure procedure coming into operation was not a "railway passenger service" within the meaning of the Railways Act 1993 (c.43) (*Highland Regional Council v British Railways Board*, *The Times*, November 6, 1995).

RAILWAY PREMISES. Stat. Def., Offices, Shops and Railway Premises Act 1963 (c.41) s.1(4).

RAILWAY PROPERTY. Stat. Def., Park Lane Improvement Act 1958 (c.63) s.23(1).

RAILWAY PURPOSES. As used in Metropolitan Water Board (Charges) Act 1907 (c. clxxi), included all things which the railway company could be compelled by Act of Parliament to provide for the purpose of working the line efficiently: see *Metropolitan Water Board v London, Brighton & South Coast Railway* [1910] 2 K.B. 890, cited DOMESTIC. See also FACILITIES.

RAILWAY STATION. "This term is not in ordinary sense used as a description merely of the actual existing structures at a station; but as the description of a space actually set apart for, and generally used as, a resting-place for traffic, or a place for

RAINFALL

dealing with it in a particular way, although every part of the space is not covered with structures or used for passing along or for deposit" (per Brett L.J., *South Eastern Railway v Railway Commissioners*, 50 L.J.Q.B. 211).

See RAILWAY; STATION.

RAINFALL. Stat. Def., Water Resources Act 1963 (c.38) s.135(1); Land Drainage Act 1976 (c.70) s.32.

Stat. Def. (including snow, hail and sleet), Water Resources Act 1991 (c.57) s.166(4) as substituted by the Water Act 2003 (c.37) s.69.

RAISE. "Raise" (s.83(6) of the Metropolitan Building Act 1855 (c.122)) was not confined to raising above-ground, but included raising a wall by adding to its foundation by under-pinning (*Standard Bank of British South Africa v Stokes*, 9 Ch. D. 68).

"A covenant to raise a mineral means, prima facie, to get or win; not to bring to the surface" (MacS. 219, citing *Senhouse v Harris*, 5 L.T. 635; *Kinsman v Jackson*, 42 L.T. 80). See WIN.

A power in a company's articles enabling the directors by debentures to "secure the repayment of or raise any money authorised to be borrowed", authorises them to issue debentures at a discount (*Re Anglo-Danubian Steam Navigation Co* L.R. 20 Eq. 341)—"raise" in such a connection being used "to prevent it being contended that the directors could only secure the repayment of the money borrowed" (per Jessel M.R., *ibid*). See REPAYMENT. See further *Re Southern Brazilian Rio Grande Railway* [1905] 2 Ch. 83, cited BORROW.

As to power to a receiver, in a debenture-holder's action, to "raise" money so as to give priority over the debentures, see *Lathom v Greenwich Ferry Co*, 72 L.T. 790.

A point of law cannot be raised on appeal from a county court unless it has been raised in the county court: see *Smith v Baker* [1891] A.C. 325. A point of law is "raised" sufficiently for this purpose if a county court judge announces that at a recent sitting he has been asked to determine the point and has done so in such and such a way. There is a distinction between "raise" and "take" in these circumstances: see *Kimpson v Markham* [1921] 2 K.B. 157.

"Raising portions" (Law of Property Act 1925 (c.20) s.164) means "creating portions" (*Re Bourne's Settlement Trusts* [1946] 1 All E.R. 411).

"Raising . . . materials" (Factories Act 1961 (c.34) s.26(1)). The operation of lifting, by means of a crane, of "scab" consisting of spilt molten metal after it has hardened is "raising materials" within the meaning of this section (*Ball v Richard Thomas & Baldwins* [1968] 1 W.L.R. 192).

"Money actually raised": see ACTUALLY RAISED.

"Borrow and raise": see BORROW.

"Raise and pay": see SEVERANCE; TO BE PAID.

"Raise obstructions and wrecks": see REMOVAL; REMOVE.

"Not to raise the rent": see MOLEST; TERMINATE.

RAMPART. See WING WALL.

RANK. Where shares were to "rank before the other shares of the company . . . to the extent of repayment of the amounts called upon and paid thereon" a resolution for the reduction of capital, whereby the preference stock holders were to receive a return of capital, was confirmed; the reduction was fair and equitable as the stockholders were not entitled to share in surplus assets (*Scottish Insurance Corporation v Wilsons & Clyde Coal Co* [1949] A.C. 462).

The phrase "shall rank both as regards dividend and capital in priority" in a company's articles referred to the time of the company's liquidation (*Re Savory (E.W.)* [1951] 2 T.L.R. 1071).

RANKNESS. See **MODUS**.

RANSOM. "'Ransome.' *Redemptio* is here (Litt. s.194) taken for a grand summe of money for redeeming of a great delinquent from some heynous crime, who is to be captivate in prison until he payeth it" (Co. Litt. 127A). Horne, in his *Mirror of Justice*, lib. 3, "makes this difference between americiament and ransome, that ransome is the redemption of a corporal punishment due by law" (Cowel).

"'Ransome' signifies properly the summe that is payd for the redeeming of one that is taken captive in warre; but it is used also for a summe of money paid for the pardoning of some great offence, and so it is used in the statute of 1 Hen. 4, c.7, and in other statutes. Fine and ransome going together, as in 23 Hen. 8, cap. 3, and elsewhere" (*Termes de la Ley*, Ransome). See further *Havelock v Rockwood*, 8 T.R. 268.

See **AMERCIAMENT; FINE AND RANSOM**.

RAPE. "'Rape.' *Raptus* is when a man hath carnal knowledge of a woman by force and against her will" (Co. Litt. 123B); or, as expressed more fully, "rape is the carnal knowledge of any woman, above the age of 10 years, against her will; or of a woman child, under that age, with or against her will" (Hale P.C. 628). The age of consent is now 13, see hereon *R. v Harling*, 26 Cr.App.R. 127.

"Rape is the act of having carnal knowledge of a woman without her conscious (see *R. v Camplin*, 1 Den. 89; *R. v Fletcher*, 28 L.J.M.C. 85) permission, such permission not being extorted by force, or fear of immediate bodily harm; but if such permission is given, the fact that it was obtained by fraud, or that the woman did not understand the nature of the act, is immaterial (see *R. v O'Shay*, 19 Cox C.C. 76), but this case was overruled by *R. v Williams*, 39 T.L.R. 131, where it was laid down that consent or submission obtained by fraud is not a defence to a charge of rape or cognate offences, and that that rule was not affected by s.2(2) of the Criminal Law Amendment Act 1885 (c.69). Provided that (a) a husband (it is said) cannot commit rape upon his wife by carnally knowing her himself, but he may do so if he aids another person to have carnal knowledge of her; (b) a BOY, under 14 years of age, is conclusively presumed to be incapable of committing rape" (Steph. Cr. (9th edn), 263). As to a husband committing rape on his wife, see *R. v Miller* [1954] 2 Q.B. 282, but the House of Lords' decision in *R. v R.* [1992] A.C. 599 reflects current thinking on the subject.

"The essential words in an indictment for rape are *rapuit & carnaliter cognovit*; but *carnaliter cognovit*, nor any other circumlocution without the word *rapuit*, are not sufficient in a legal sense to express rape: 1 Hen. 6, 1 a, 9 Edw. 4, 26 a" (Hale P.C. 628; see further 4 Bl. Com. 307). Possibly, the omission of "*carnaliter cognovit*" is cured by the verdict; but such omission is imprudent (3 Russ. Cr. (6th edn), 230, citing *R. v Warren*, Unreported).

As to admissibility of the whole of a prosecutrix's speedy complaints, see *R. v Lillyman* [1896] 2 Q.B. 167; see further *R. v Osborne* [1905] 1 K.B. 551.

"'Rape of the forest' is trespass committed in the forest by violence" (Cowel).

A "rape" "is part of a county, being in a manner the same with a hundred, and sometimes contains in it more hundreds than one" (Cowel). See **WAPENTAKE**. Cp. **LATHE**.

"Rape offence": Stat. Def., Sexual Offences (Amendment) Act 1976 (c.82) s.7(2).

RAPE

Also male rape and buggery: Stat. Def., Sexual Offences Act 1956 (c.69) ss.1 and 12 as substituted and amended by Criminal Justice and Public Order Act 1994 (c.3) ss.142 and 143; Sexual Offences Act 2003 (c.42) s.1.

See *Rape Cases in the Jurisprudence of the European Court of Human Rights: Defining Rape and Determining the Scope of the State's Obligations* [2008] E.H.R.L.R. 3, pp.357–375.

See CARNAL KNOWLEDGE; CONSENT.

RAPE MEAL. See Fertilisers and Feeding Stuffs Act 1926 (c.45) Sch.IV.

RAPINE. “To take a thing in private against the owners will, is properly, theft; but to take it openly, or by violence, is rapine” (Cowel); see further 4 Bl. Com. 243. Cp. ROBBERY.

RASCAL. See CHEAT.

RAT. As to the defamatory nature of calling a working man a “rat”, in respect of a trade dispute, see *Parlane v Templeton*, 34 S.L.R. 234.

Damage by rats: see PERIL OF THE SEA.

RATE; RATES. Apart from any special definition, a “rate” is an impost, usually for current and recurrent expenditure, spread over a district; and is distinct from an amount payable for work done upon or in respect of particular premises (see per Brett L.J., *Budd v Marshall*, 5 C.P.D. 481).

A lessor’s covenant to pay “all rates and taxes chargeable in respect of the demise premises”, held to include the water rate (*Direct Spanish Telegraph Co v Shepherd*, 13 Q.B.D. 202). As, however, the word “rates” is here associated with “taxes”, it may perhaps be doubted whether the meaning of it should not have been confined to parochial or other such like public rates; see TAXES; DEDUCTIONS. And in a subsequent case where a lessor covenanted to pay “all rates, taxes, and impositions, whatsoever whether parliamentary, parochial, or imposed by the Corporation of London, or otherwise”, it was held by the Court of Appeal (reversing the Divisional Court, acting upon the authority of *Direct Spanish Telegraph Co v Shepherd*, above), that that case did not apply, and that the water rate was not included (*Badcock v Hunt*, 22 Q.B.D. 145, cited IMPOSED). In this last case, the Court of Appeal distinguished the words of the covenant from those used in the other case, but the drift of the judgments would seem to justify the statement that *Direct Spanish Telegraph Co v Shepherd* was not favourably regarded. But the Court of Appeal decided *Badcock v Hunt* “simply upon the word ‘imposed’” (per Buckley J., *Bourn v Salmon*, 95 L.T. 139, affirmed [1907] 1 Ch. 616); and as the lessee in that last case had agreed to pay “all rates and taxes payable in respect of the said demised premises” the learned judge followed *Direct Spanish Telegraph Co v Shepherd*, and held that the agreement included water rate. See also *Drieselman v Winstanley*, 53 S.J. 631; cp. WATER RATE.

As to a lessor’s covenant to pay “rates and taxes”, see *Salaman v Holford* [1909] 2 Ch. 64.

“Any other rate”, in a local Act, held not to include water rate (*Northampton v Ellen*, 87 L.T. 335).

“Rates, taxes and outgoing”, included drainage charges under the Land Drainage Act 1930 (c.44) (*Smith v Smith* [1939] 4 All E.R. 312).

“Free from all taxes and assessments”, “free from all rates and assessments”: see *Sion College v London* [1901] 1 K.B. 617, and *London v Netherlands Steam Boat Co* [1906] A.C. 263, both cited TAXES.

(Public Health Act 1936 (c.49) s.126(1).) The phrase “water rate” in s.126(1) (concerning the cost of supplying water) did not necessarily imply uniformity of charge (*Border Rural DC v Roberts* [1950] 1 K.B. 716).

“The rate authorised” to be charged by a railway company for the conveyance of merchandise: see *Spillers & Bakers v Great Western Railway* [1909] 1 K.B. 604; *Cowdenbeath Coal Co v North British Railway*, 8 Ry. & Can. Tr. Cas. 251.

“Rates chargeable on the occupier”: see *Cork Improved Dwellings Co v Barry* [1919] 2 I.R. 244.

“Rate due and payable”: see *Kershaw, Leese & Co v Stockport Overseers* [1923] 2 K.B. 129, where it was held that a rate is due and payable as soon as it is made and published, without any demand being made for payment.

“Rate made under this Act by any urban authority” (s.256 of the Public Health Act 1875 (c.55)): see *Elliott v Russell* [1902] 2 K.B. 748.

In *Carr v Fowle* [1893] 1 Q.B. 251, Collins J., said that “other”, in the exemption of tithe rentcharge (s.4(5) of the Extraordinary Tithe Redemption Act 1886 (c.54)) from “parochial, county, or other rate charge or assessment”, “was wide enough to include land tax”.

A qualification, e.g. for harbour commissioner, depending on being rated to the poor “by one or more rate or rates to the amount of 10 per annum”, means being assessed on 10; it does not mean paying rates to that amount (*Easton v Alce*, 31 L.J. Ex. 115).

“Parochial or other local rate” (Bankruptcy Act 1914 (c.59) s.33(1)(a)): does not include a water rate (*Re Baker, Ex p. Eastbourne Waterworks Co v Official Receiver* [1954] 1 W.L.R. 1144).

“Rate of interest varying with the profits” (s.1 of the Bovill’s Act 1865 (c.86)): see *Re Vince* [1892] 2 Q.B. 478, cited *DUE ALLOWANCE*.

Agreement to pay rent “at the rate of” so much per annum does not imply a contract for a year (*Atherstone v Bostock*, 10 L.J.C.P. 113); *secus*, if the agreement is to take the premises “at the rent” of so much per annum (per Tindal C.J., *Atherstone*). See further as to “at the rate of”, *Salton v New Beeston Co* [1899] 1 Ch. 775, cited *YEAR*.

Where, under s.43 of the Companies Act 1929 (c.23), a company was authorised to pay, for the underwriting of its shares, a commission “at a rate” prescribed, that did not authorise the payment of a lump sum (*Booth v New Afrikander Gold Mining Co* [1903] 1 Ch. 295, cited *COMMISSION*). See Companies Act 1985 (c.6) ss.97, 98.

So a bill of sale had to reserve the interest to be secured by it at a “rate” (see Form to s.9 of the Bills of Sale Act 1882 (c.43)), which accordingly prohibited the reservation of a lump sum (*Davis v Burton*, 11 Q.B.D. 537, and *Myers v Elliott*, 16 Q.B.D. 526).

“Rate of remuneration paid” (Prices and Incomes Act 1966 (c.33) ss.28(2), 29(4)) was held to mean the rate contracted to be paid and not the amount actually paid before the dates on which the Act came into operation (*Allen v Thorn Electrical Industries* [1968] 1 Q.B. 487).

“Current rate”: see *CURRENT*.

“Gas Rate”: see *GAS*.

“General purposes rate”: see *GENERAL PURPOSES*.

“Highway rate”: see *HIGHWAY*.

“Last rate”: see *LAST*.

“Prescribed rate” of profits: see *PRESCRIBED*.

“Rates actually levied”: see *LEVY*.

RATE

“Rate”: “Rates”. Stat. Def., Compulsory Purchase Act 1965 (c.56) s.27(7); General Rate Act 1967 (c.9) s.115; Rent Act 1968 (c.23) ss.38, 51, 67; Housing Finance Act 1972 (c.47) ss.26, 48, 61(6), 70, 88; Finance Act 1974 (c.30) s.52(2); Rent (Agriculture) Act 1976 (c.80) s.34; Rent Act 1977 (c.42) s.152; Social Security and Housing Benefits Act 1982 (c.24) s.35; Local Government Finance Act 1982 (c.32) s.7; Rates Act 1984 (c.33) s.19; Local Government Act 1986 (c.10) s.1.

“Rate period”: Stat. Def., General Rate Act 1967 (c.9) s.115.

See AVERAGE RATE; AVERAGE UNION RATE; COUNTY; GENERAL RATE; LOCAL RATE; MAXIMUM; OVER-RATE; PAROCHIAL RATE; POLICE; POOR RATE; PUBLIC HEALTH; PUBLIC TAX; RAILWAY RATE; REASONABLE RATE; THROUGH RATE; TOLL; TOWN RATE; WATER RATE; ASSESSMENTS; BURDEN; CHARGES; DUTIES; IMPOSITION; OUTGOING; TAXES; BOROUGH.

RATE OF EXCHANGE. As to the rate of exchange to be applied in assessing damages to be paid abroad, see *Di Fernando v Simon Smuts & Co* [1920] 3 K.B. 409, and cases therein cited. See also *The Celia* [1921] 2 A.C. 544; *Re British-American, etc. Claim* [1922] 2 Ch. 575.

RATEABLE. Prima facie, “rateable property” means property in its nature capable of being rated” (per Lush J., *R. v Malden*, L.R. 4 Q.B. 326); therefore, unoccupied houses would have had to be included in the Parish lists forming the basis or standard for a county rate (s.2 of the County Rates Act 1852 (c.81)) (*R. v Hammersmith*, 33 L.T.O.S. 183), and so of the valuation list, under s.14 of the Union Assessment Committee Act 1862 (c.103), as regards new houses completely finished and ready for occupation, but not actually occupied at the time the list was returned (*R. v Malden*, above).

“Rated” not construed as “rateable”: see *R. v Rose*, 6 Q.B. 153, cited USUALLY.

Stat. Def., Representation of the People Act 1949 (c.68) s.5(5)(b).

RATEABLE HEREDITAMENT. See *New River Co v Hertford Assessment Committee* [1912] 2 K.B. 597, cited INTAKE.

RATEABLE OCCUPATION. A husband who had separated from his wife and left the matrimonial home was not in “rateable occupation” for the purposes of the Rate Acts notwithstanding that the home remained in his name (*Doncaster Metropolitan BC v Lockwood* (1987) 17 Fam. Law 241). A person who occupied premises as a squatter, either alone or jointly with other squatters, could be in “rateable occupation” of the premises for the purposes of the General Rate Act 1967 (c.9) (*Westminster City Council v Tomlin* (1988) 28 R.V.R. 196). The owners of a warehouse were held to be in “rateable occupation” of a bay in the warehouse which, although empty, was open for business (*Calmain Properties v Rotherham Metropolitan BC* [1988] E.G. 127). A property company was held not to be in “rateable occupation” of a sports ground which it had bought, with its original equipment, with a view to selling at a profit (*Sheafbank Property Trust v Sheffield Metropolitan DC* [1988] R.A. 33).

See BENEFICIAL; EXCLUSIVE OCCUPATION.

RATEABLE VALUE. Probably the general meaning of “rateable value” is the same as that provided for Valuation (Metropolis) Act 1869 (c.67): see ANNUAL VALUE; see further *New River Co v Hertford Assessment Committee* [1912] 2 K.B. 597, cited INTAKE.

“Rateable value” in the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17) s.12(7): held to mean net not gross value (see *Waller v Thomas* [1921] 1 K.B. 541).

“Rateable value”. (Agricultural Rates Act 1896 (c.16) s.9): see *Lancashire Asylums Board v Manchester* [1900] 1 Q.B. 458, in which case “rateable value” was contrasted with “assessable value”.

Stat. Def., Rent Act 1977 (c.42) s.25; Local Government Planning and Land Act 1980 (c.65) s.56, Sch.11 para.1; Local Government Finance Act 1982 (c.32) Sch.2 para.1.

Stat. Def., Business Rate Supplements Act 2009 s.12.

See GROSS; PLANTATION.

RATED or ASSESSED. Under s.6 of the Metropolis Management Act 1855 (c.120), a vestry consisted of persons “rated or assessed”. “An assessment seems to me to speak of two operations. The overseers first assess the rate for the whole parish—that is, they consider and determine the amount which is to be raised for the whole parish. That having been done the rate is assessed, but has not been made. The next operation is to calculate the amount for which each person is to be liable. But the mere calculation and fixing of the amount which each person is to pay does not impose any liability, for the rate has not been made; but when the amount has been assessed, the person is rated by putting the amount of the assessment into the ratebook. A person cannot really be assessed, so as in any way to be liable, until he has been rated; nor can he be rated until he has been assessed. The two words ‘rated’ ‘assessed’, therefore, describe the operation which makes a person liable to the rate. That seems to me to show that although the words in s.6 are ‘rated or assessed’, yet the proper way to read them is ‘rated and assessed’, as having reference to one operation” (per Esher M.R., *Mogg v Clark*, 16 Q.B.D. 79). It was held in that case that an owner (not himself the occupier) who had made an agreement to pay poor rates under s.3 of the Poor Rate Assessment and Collection Act 1869 (c.41), was not a person “rated or assessed” within the section just referred to; see on this case *R. v Soutter* [1891] 1 Q.B. 57; *Gordon v Williamson* [1892] 2 Q.B. 459; see also *Goodhew v Williams*, 3 C.P.D. 382.

See further, as to qualification depending on rating, *Easton v Alice*, 31 L.J. Ex. 115, cited RATE.

“Taxes, charged, rated, assessed, or imposed”: see CHARGED; ASSESSED; IMPOSED.

“Usually rated”: see USUALLY.

RATEPAYER. Stat. Def., General Rate Act 1967 (c.9) s.115.

RATIFY. Ratification of a contract “must be by an existing person on whose behalf a contract might have been made at the time” (per Charles J., *Nichols v Regent’s Canal Co*, 63 L.J.Q.B. 645, citing Willes and Byles JJ., *Kelner v Baxter*, L.R. 2 C.P. 174). See further *Falcke v Scottish Insurance*, 34 Ch. D. 234; see also *Re English & Colonial Produce Co* [1906] 2 Ch. 435, following *Re Rotherham Alum Co*, 25 Ch. D. 103; *Re National Mail Motor Coach Co* [1908] 2 Ch. 15.

“Ratification requires: (a) That the agent’s act must be one in the doing of which he purports to act for his principal; (b) the act must be of a kind which the agent was at the time empowered to do for his principal; (c) at the time of the ratification the principal must have had the legal capacity of doing the act himself” (per Wright J., *Firth v Staines* [1897] 2 Q.B. 70, cited APPROVAL); the second of these requirements was regarded as not essential by the majority of the Court of Appeal (*Durant v Roberts* [1900] 1 Q.B. 629), but that case was reversed in House of Lords (sub nom. *Keighley v Durant* [1901] A.C. 240). Cp. *Lyell v Kennedy*, 14 App. Cas. 460, cited CESTUI; see further per Bingham J., *Hambro v Burnard* [1903] 2 K.B. 414, citing *March v Joseph*

[1897] 1 Ch. 213; but see *Reckitt v Barnett, Pembroke and Slater* [1929] A.C. 176. See also Bowstead on Agency (11th edn) art.28.

“Ratification of insurance after loss”: see *Grover v Matthews* [1910] 2 K.B. 401.

Sale, by heir of entail in possession, of a Scotch entailed estate “SUBJECT to the ratification of the court”: “In ordinary parlance, ‘ratification’ is used to express the giving of consent by one without whose consent a transaction entered into by others would be incomplete or invalid; and also, the confirmation of a provisional agreement, or of an imperfect obligation, by the same parties who made the one or were not legally bound by the other. Ratification by a court of law may signify that the court is to examine the transaction submitted to it and to decide, according to its discretion, whether the terms of the transaction are such that the parties ought, or ought not, to be bound by the agreement which they have made; or it may mean that the court is to give its formal approval without reference to the terms of the transaction, on being satisfied that due provision has been made for protecting and securing the legal interests of third parties which would be prejudicially affected if no such provision were made” (per Lord Watson, *Stewart v Kennedy*, 15 App. Cas. 99; in that case Lord Macnaghten said that “‘ratification’ simply means ‘confirmation’”, and “that that is the proper and ordinary signification of the word”, and as regards that case, the House of Lords so held). See further *Stewart v Kennedy* (No.2), 15 App. Cas. 108. Cp. SANCTION.

A “ratification” after full age of a contract made during infancy (Statute of Frauds Amendment Act 1828 (c.14) s.5) meant such a ratification as would make a person liable as principal for an act done by another in his name (*Harris v Wall*, 1 Ex. 122; *Mawson v Blane*, 10 Ex. 210; *Maccord v Osborne*, 1 C.P.D. 568). See further CORRECT. No action can now be brought on such a ratification (Infants Relief Act 1874 (c.62) s.2).

When a will describes a deed and proceeds to “ratify and confirm” it, the deed is incorporated into the will (*Sheldon v Sheldon*, 1 Rob. Ecc. 89; *Stump v Gaby*, 22 L.J.Ch. 352; *Re Harris*, L.R. 2 P. & D. 83). See further, as to incorporation of documents in a will, Wms. Exs. (12th edn), 56–59; Agnew on the Statute of Frauds, 343–350; *Re Garnett* [1894] P. 90; *Re Murray* [1896] P. 65, following *Re Howden*, 43 L.J.P. & M. 26; *Re Smart* [1902] P. 238; *Eyre v Eyre* [1903] P. 131; *University College of North Wales v Taylor* [1908] P. 140. Cp. REVIVE; CONFIRM.

RATIONE. A liability to repair a highway, or public bridge, *ratione tenuræ*, is where the liability to do the repair has from time immemorial attached to the occupancy of particular lands (13 Rep. 33; *Cuckfield v Goring* [1898] 1 Q.B. 865; Glen on Highways (2nd edn), 131). See hereon, and as to the evidence to prove such a liability, *Rundle v Hearle* [1898] 2 Q.B. 83. See further *Esher and Dittons Urban Council v Marks*, 71 L.J.K.B. 309; per Wills J., *Ferrand v Bingley* [1903] 2 K.B. 445. The liability may cease by the character of the highway being altered (*Heath v Weaverham* [1894] 2 Q.B. 108). See also *Re Stamford and Warrington* [1911] 1 Ch. 648. See further LEGALLY EXEMPT.

A liability to repair a highway, *ratione clausuræ*, is where the owner of unenclosed lands lying next adjoining the highway, encloses such lands on both sides of the highway (see Glenn on Highways (2nd edn), 141).

RATS. See PERIL OF THE SEA.

REACHABLE. The words “reachable on arrival” in a voyage charter should be construed in the ordinary sense, and they do not apply solely to cases where a berth was not reachable on arrival by reason of congestion (*K/S Arnt J. Moerland v Kuwait*

Petroleum Corporation; The Fjordaas [1988] 1 Lloyd's Rep. 336), or non-availability of tugs and bad weather (*Palm Shipping v Kuwait Petroleum; The Sea Queen* [1988] 1 Lloyd's Rep. 500).

READ. "Read with" (Landlord and Tenant (Rent Control) Act 1949 (c.40) s.11): see *Preston and Area Rent Tribunal v Pickavance* [1953] A.C. 562.

READER. "The reader is he who reads in the Church of God, being also ordained to this that he may preach the Word of God to the people" (Phil. Ecc. Law, 90).

READIEST. See **FIRST AND READIEST**.

READILY CONVERTIBLE ASSET. Stat. Def., s.702 of the Income Tax (Earnings and Pensions) Act 2003 (c.1).

READINESS. To be valid a notice of "readiness to discharge" issued by a ship must indicate readiness to discharge the whole cargo and not merely a part of it (*Unifert International SARL v Panous Shipping Co (The Virginia M)* [1989] 1 Lloyd's Rep. 603).

READING. See **PUBLIC READING**.

"Reading room": see **LIBRARY**.

READY. "I will be ready to", held a covenant (*Walker v Walker*, 1 Rol. Ab. 519, pl. 8).

See **READY AND WILLING**.

READY AND WILLING. "'Ready and willing' imply not only the disposition, but the capacity, to do the act" (per Adinger C.B., *De Medina v Norman*, 11 L.J. Ex. 322). "I cannot conceive any circumstance more indicative of want of readiness than incapacity" (per Bosanquet J., *Lawrence v Knowles*, 8 L.J.C.P. 210). "In common sense, the averment of readiness and willingness (by, e.g. plaintiffs) must be that the non-completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it if it had not been renounced by the defendants" (per Campbell C.J. *Cort v Ambergate Railway*, 17 Q.B. 144). See further *Griffith v Selby*, 9 Ex. 393.

In *Nelson v Rolfe* [1950] 1 K.B. 139, estate agents were entitled to commission for introducing a purchaser "able, ready and willing" to purchase the vendor's house even though the vendor had already given an option to purchase to the eventual purchasers. The estate agents were not entitled to commission where the person introduced, although "ready, able and willing" to purchase at the time of the introduction, did not remain so (*Reed v Goody* [1950] 2 K.B. 277). See **ABLE**; **COMMISSION**; **WILLING**.

Estate agents were entitled to commission for introducing a purchaser "ready, able and willing" to purchase the vendor's lease of shop premises, even though the purchaser's offer was below the asking price, and even though the sale was never completed (*Christie Owen & Davis v Rapacioli* [1974] Q.B. 781).

(Arbitration Act 1950 (c.27) s.4(1).) A party to an arbitration agreement must be "ready and willing to do all things necessary to the proper conduct of the arbitration" before obtaining an order staying proceedings. This does not mean that the party cannot get a stay because another party has allowed the contractual time to run out (*W. Bruce v J. Strong* [1951] 2 K.B. 447).

READY FOR SEA. See *Pittegrew v Pringle*, 3 B. & Ad. 520; *Graham v Barras*, 5 B. & Ad. 1011, cited **SAIL**; *Bouillon v Lupton*, 33 L.J.C.P. 37, cited **SEAWORTHY**.

READY MONEY. A bequest of "ready money" includes cash at the bankers, whether balance on current account, or on a deposit, or withdrawable after notice (*Parker v Marchant*, 12 L.J. Ch. 385; *Langdale v Whitfield*, 27 L.J. Ch. 797; *Taylor v*

Taylor, 1 Jur. 401; 2 Jarm. (8th edn), 1286; *Tallent v Scott* [1868] W.N. 236; *Stein v Ritherdon* [1868] W.N. 65), or cash at a savings bank of which notice of withdrawal has been given (*Re Powell*, Johns. 49); *secus*, of unreceived dividends on stock (*May v Grave*, 18 L.J. Ch. 401). But in *Cooke v Wagster* (23 L.J. Ch. 496), Stuart V.C. said that *May v Grave* was not reconcilable with *Parker v Marchant*, nor with *Fryer v Ranken* (9 L.J. Ch. 337) In *Cooke v Wagster* it was held that a debt passed under a bequest of "ready money"; but that was under the peculiar wording of the will; generally, neither an ordinary debt nor money due on a note of hand will be included in "ready money" (*Re Powell*, above).

But the statement in Jarman (for which *Manning v Purcell*, 7 D.G.M. & G. 55, and *Re Powell*, above, are cited) that a deposit at a bank, though only withdrawable after notice, is included in "ready money" is, semble, contradicted by *Mayne v Mayne*, above, which last case has been followed by Warrington J. in *Re Wheeler* ([1904] 2 Ch. 66): "I am of opinion that if money on deposit with bankers is subject to more than twenty-four hours' notice of withdrawal, it is not 'ready money'" (per Farwell J., *Re Price* [1905] 2 Ch. 56); see further *Re Derbyshire* [1906] 1 Ch. 135, cited MONEY DUE. Cp. MONEY IN HAND. But money on deposit may be ready money as regards a bequest in a will if the course of business of the testator had been to draw upon it in the same way as the current account was drawn upon: see *Re Rodmell*, 108 L.T. 184.

A bequest of "whatever remains of the ready money already mentioned", held not to pass a sum of £4,000 Government Stock which was previously mentioned in the will (*Bevan v Bevan* 5 L.R. Ir. 57). See further *Browne v Groombridge*, 4 Mad. 501; *Vaisey v Reynolds*, 6 L.J.O.S.Ch. 172; *Smith v Butler*, 3 J. & La. T. 565; and as to admitting extrinsic evidence to widen the meaning of "ready money", see *Knight v Knight*, 30 L.J. Ch. 644.

"Ready money football betting business": see Ready Money Football Betting Act 1920 (c.52) s.2.

See MONEY.

READY QUAY BERTH. Where by a charterparty, a ship, on arriving in port, is to go "to such ready quay berth as ordered by charterers", that means that the charterers undertake, for the benefit of the shipowner, that a quay shall be "ready" as soon as the ship is ready to proceed to it (*Harris v Jacobs*, 15 Q.B.D. 247).

READY TO BE DELIVERED. See PUBLICATION OF AWARD.

READY TO DISCHARGE. See "arrived ship", under ARRIVE.

READY TO LOAD. A ship to be "ready to load", or "ready to receive cargo", must be completely ready, and discharged in all her holds, so as to give the charterer complete control of every portion of the ship available for cargo (*Groves v Volkart*, 1 T.L.R. 92, 454. See also *Vaughan v Campbell*, 2 T.L.R. 33; *Hick v Tweedy*, 63 L.T. 765; *Zyderhorn Sailing Ship Co v Duncan, Fox & Co* [1909] 2 K.B. 929); and that condition is not controlled by an exception of "dangers of the seas" (*Smith v Dart*, 14 Q.B.D. 105, cited DANGERS; see also THROUGHOUT), nor is its performance excused by bad weather (*Shubrick v Salmond*, 3 Burr. 1637; *Smith v Dart*, above; *Glaholm v Hays*, 10 L.J.C.P. 98; *Oliver v Fielden*, 4 Ex 135), or other *vis major*, e.g. quarantine (per Lord Shand, *White v Winchester SS Co*, 13 Sess. Cas. R. 536), or medical prohibition (*The Austin Friars*, 71 L.T. 27). Cp. *Granger v Dent*, 1 Moo. & M. 475.

"For the calculation of lay days, it seems that there is no difference between 'ready to load' and 'ready in berth to load', and it has been so held in an unreported case" (Scrutton (4th edn), 99).

A charterer who sought to cancel a charterparty on the ground that the ship was not ready to load had to prove that the loading gear would have been defective when required; that it might have been defective was not enough (*Noemijulia Steamship Co v Minister of Food* [1951] 1 K.B. 223).

REAL. “The mischief being addressed was “preventing unmeritorious claims proceeding”: para.51 of Chapter 12 of the Report of the Scottish Civil Courts Review. It may assist to bear that mischief in mind when construing the words themselves, which require there to be a “real prospect of success”. In Chambers Dictionary “real” is defined as “actually existing; not counterfeit or assumed; genuine”. It may be considered to be the opposite of “fanciful”. I am fortified in this understanding by the observations of Lord Woolf in *Swain v Hillman* [2001] 1 All ER 91 (at p.92): ‘The words “no real prospect of succeeding” do not need amplification, they speak for themselves. The word “real” distinguishes fanciful prospect of success and they direct the court to the need to see whether there is a “realistic” as opposed to a “fanciful” prospect of success.’” (*Ochiemhen (AP), Re Judicial Review* [2016] ScotCS CSOH_20.)

REAL (AS OPPOSED TO VIRTUAL). Stat. Def., Gambling Act 2005 (c.19) s.353.

REAL ACTION. “‘Action real’ is that action whereby a man claims title to lands tenements or hereditaments, in fee or for life; and these actions are possessory, or auncestrel; possessory, of a man’s own possession and seizin; or auncestrel, of the possession or seizin of his ancestor” (Jacob, *Action*; see further *Termes de la Ley, Actions Real*). Cp. **PERSONAL ACTION**.

Real and mixed actions (except dower, *quare impedit*, and ejectment) were abolished as from December 31, 1834 (s.36 of the Real Property Limitation Act 1833 (c.27)); dower and *quare impedit* were abolished as from October 9, 1860 (s.26 of the Common Law Procedure Act 1860 (c.126)). Since the Judicature Acts there is no special form of action of ejectment.

REAL AND PERSONAL EFFECTS. This phrase is “synonymous with substance” (per Mansfield C.J., *Hogan v Jackson*, 1 Cowp. 307).

In an assignment for the benefit of creditors by partners of “all” their “real and personal estate and effects”, only the joint property of the assignors passes (*Re Lowden*, 10 L.T. 261).

See **REAL EFFECTS**.

REAL BURDEN. As used in Sch.L. to, and s.19 of, Titles to Land Consolidation (Scotland) Act 1868 (c.101): see *Williamson v Begg*, 24 S.L.R. 490; *Muirden v Cowie*, S.L.R. 605.

REAL EFFECTS. “Do the words ‘real effects’ in law mean real chattels only? No authority has been produced to show that they do. The natural and true meaning of ‘real effects’, in common language and speech, is real property” (per Mansfield C.J., *Hogan v Jackson*, 1 Cowp. 307). “*Hogan v Jackson* decided that ‘real effects’ mean real authority” (per Parker V.C., *Torrington v Bowman*, 22 L.J. Ch. 236). See further 2 Jarm. (8th edn), 993.

See **EFFECTS**.

REAL ESTATE. “Real estate” is a term of art to be construed, as a general rule, technically (per Chitty J., *Butler v Butler*, 28 Ch. D. 66). It comprises all a person’s freehold and copyhold lands tenements and hereditaments, including therein titles of

REAL

honour and dignity, and also incorporeal hereditaments; but not including leaseholds for years (Wms. R.P. Introd.; see also ESTATE).

Leaseholds for lives, pass under a gift of "real estate" (*Weigall v Brome*, 6 Sim. 99).

Though a devise of "real estate" does not, prima facie, include leaseholds for years, for they are only chattels (Co. Litt. 46A; see further *Holmes v Milward*, 47 L.J. Ch. 522; *Butler v Butler*, above), yet leaseholds for years may, by a context or the circumstances, be included in such a devise (*Swift v Swift*, 29 L.J. Ch. 121; *Gully v Davis*, L.R. 10 Eq. 562; *Re Guyton and Rosenberg* [1901] 2 Ch. 591). And so, where a testator being possessed of freeholds and long leaseholds at A, and of long leaseholds only at B, devised his "real estate" at A and B, it was held that all the leaseholds passed (*Moase v White*, 3 Ch. D. 763; but see on this case *Butler v Butler*, above). So, in *Re Davison* (58 L.T. 304), North J., followed *Moase v White*, and further held that "real estate" was equivalent to "land" as that latter word is used in s.26 of the Wills Act 1837 (c.26); *Moase v White* was also followed by Kekewich J. in *Re Uttermare* [1893] W.N. 158. See LAND. See further 41 S.J. 24.

A gift of "real estate" may pass a beneficial share in the proceeds to arise from the sale of real estate where the testator had no real estate of his own in the strict technical sense (*Re Glassington* [1906] 2 Ch. 305, citing *Stead v Newdigate*, 2 Mer. 521; explained in *Re Sturt* [1922] 1 Ch. 416).

A gift of "real estate" may pass the personal estate where that is the plain intention of the testator, e.g. where a testator, having no real estate, gave to his brother "the whole of my real estate", excepting a legacy of 600 and of his personal effects at F to his cousin, and another legacy of 50 to some one else; the exceptions being of personalty, showed the quality of the property from which they were excepted (per Kekewich J., *Re Tillar*, 50 S.J. 464, citing *Hotham v Sutton*, 15 Ves. 326).

A general devise of "real estate", or of "lands", and such like expressions, includes real estate contracted to be purchased by the testator, but not actually conveyed to him (*Atcherley v Vernon*, 10 Mod. 518); but unless the testator expresses a contrary intention, any unpaid purchase money is payable by the devisee (LOCKE KING'S ACTS, s.2 especially (30 & 31 Vict. c.69); see hereon *Re Kennington*, 71 L.J. Ch. 170). Such a devise will not include purchase money of property sold by the testator, but which he has not conveyed (*Knollys v Shepherd*, 1 Jac. & W. 499); *secus*, where the sale is demanded after his death under an option given in his lifetime (*Durant v Vause*, 11 L.J.Ch. 170).

"Any beneficial interest in real estate" (Administration of Estates Act 1925 (c.23) s.51(2)) can cover a share in the proceeds of sale of real property (*Re Bradshaw* [1950] Ch. 582), and also heritable estates or interests in copyholds (*Re Sirett, Pratt v Burton* [1969] 1 W.L.R. 60).

Stat. Def., Wills Act 1837 (c.26) s.1; Ecclesiastical Commissioners Act 1841 (c.39) s.29; Judicature Act 1925 (c.49) s.175; Administration of Estates Act 1925 (c.23) ss.3 and 55 (see also s.52, where "real and personal estate" is defined); Supreme Court Act 1981 (c.54) s.128.

See CAPITAL MONEY; FEE; LAND; LANDED PROPERTY; REAL OR PERSONAL PROPERTY; REAL PROPERTY; PERSONAL ESTATE; REALTY.

REAL ESTATE INVESTMENT TRUST. Stat. Def., Finance Act 2006 Pt 4.

REAL FIREARM. Stat. Def., Violent Crime Reduction Act 2006 s.38.

REAL OR PERSONAL PROPERTY. In the language of conveyancers, all kinds of property and all kinds of proprietary rights are comprehended in one or other of the

two great classes into which such property and rights are divided: (1) Real, or (2) Personal property (see 2 Bl. Com.; Intro. Chap. Wms. R.P.). But in the Malicious Damage Act 1861 (c.97) s.52, the phrase “any real or personal property whatsoever” related only “to corporeal; tangible, visible property, and not to property which is incorporeal, invisible, and not tangible” (per Lopes J., *Laws v Eltringham*, 51 L.J.M.C. 15), and therefore a right to herbage, e.g. of freemen in a town moor, was not within the section (8 Q.B.D. 283); see further, as to this section, WILFUL AND MALICIOUS.

It may probably be stated that “real property” and real estate are synonymous, and that “personal property” is synonymous with personal estate.

REAL PRESENCE. The Church of England does not forbid the assertion of a “real, actual, objective” Presence in Holy Communion, for that does not affirm a Presence other than spiritual (*Sheppard v Bennett*, L.R. 4 P.C. 371); see this case for much learning on the doctrine of the “Real Presence”, especially as dealt with by the Book of Common Prayer.

See SACRIFICE.

REAL PROPERTY. See REAL ESTATE; REAL OR PERSONAL PROPERTY.

REAL PROSPECT OF SUCCESS. A “real prospect” of success (Civil Procedure Rules 24.2(a)) is simply one which is realistic as opposed to fanciful (*Swain v Hillman* [2001] 1 All E.R. 91, CA).

There is no material difference between the test of whether there is a “reasonable prospect of success” (CPR r.24(2)) and the test of a “genuine triable issue” for setting aside a statutory demand (*Collier v P&MJ Wright Ltd* [2007] EWCA Civ 1329).

REAL REPRESENTATIVE. As regards real estate (except copyholds) the personal representative of a person dying on or since January 1, 1898, became his or her real representative (Land Transfer Act 1897 (c.65), Pt 1). See LEGAL REPRESENTATIVES; REPRESENTATIVE.

REAL RISK. See FLAGRANT.

REALISABLE PROPERTY. (Drug Trafficking Offences Act 1986 (c.32) s.4(3).) A contingent interest under a will is realisable property under s.4(3) (*R. v Walbrook and Glasgow* [1994] 15 Cr.App.R.(S.) 783).

For the purposes of s.77 of the Criminal Justice Act 1988, “realisable property” extends to assets to which the person against whom the restraint order was made had legal title, whether or not he had beneficial ownership (*Sinclair v Glatt* [2009] EWCA Civ 176).

REALISATION. “Costs of realisation” means the costs of actual sale, including an abortive sale when it is a step to realisation (*Batten v Wedgwood Co*, 28 Ch. D. 317; *Lathom v Greenwich Ferry Co*, 72 L.T. 790); but, probably, the phrase does not include costs of preservation (see this last case; but see *Perry v Oriental Hotels Co*, L.R. 12 Eq. 126).

“Realisation” (Theft Act 1968 (c.60) s.22(1)) merely involves the exchange of goods for money, and the purchaser can be as guilty of the “realisation” as the seller (*R. v Deakin* [1972] 1 W.L.R. 1618).

“Realisation by or for the benefit of another person”: see BENEFIT.

Stat. Def., Corporation Tax Act 2009 ss.734 and 856.

“42. This issue turns on the meaning of the words ‘realisation of the security’ in s.106(d). Neither the Act nor any associated legislation contains a statutory definition of the term ‘realisation’ applicable to s.106(d). Mr Say relied on *Wilson v Howard* [2005] EWCA Civ 147. In that case the claimant entered into 67 successive

agreements with the defendant pawnbroker, under which she successively pawned 13 groups of objects. Under the arrangements, she was treated as periodically paying off the capital and interest purportedly due under each agreement and at the same time re-pledging the goods under a fresh agreement. A feature of the defendant's system was that the claimant was charged a full month's interest for a period short of a month—sometimes a single day—often calculated from a foreshortened redemption date. The use of the fresh agreement would then enable the defendant to set off against the principal notionally advanced under the new agreement the debt (including interest) owed under the previous agreement. The trial judge held that each successive agreement was a fresh agreement and not merely a variation of the prior agreement. He held that eight of the agreements were unenforceable because they contravened the principles of fair dealing and for other reasons. He ordered the return of the goods purportedly pledged under the agreements and awarded the claimant a sum equal to all the amounts notionally paid to the pawnbroker by each 'rolling up' even though in actual fact the claimant had only made a single payment. . . .

48. Neither that notional realisation nor the notional payment off of the outstanding capital and interest when each new agreement was made had anything to do with redemption. Despite Mr Say's submission, I cannot see any analogy between the 'realisation' of a security within s.106(d) and the redemption of a mortgage. In conventional legal terms the realisation of a security is something carried out by or on behalf of a creditor to release the value of the security so that the value can be applied in discharge of the debt. Redemption is something done by a debtor (viz. payment of what is outstanding) in order to obtain the return of the secured property. I can see no good reason why 'realisation' of the security for the purposes of s.106(d) should bear any meaning other than its conventional meaning. Sections 120 and 121 of the Act support that conclusion. Section 120 sets out the circumstances in which 'the pawn becomes realisable by the pawnee' where the pawn has not been redeemed at the end of the redemption period. Section 121, which is headed 'Realisation of pawn', provides for the pawn to be 'realisable' by the pawnee selling it.

49. That conventional interpretation of s.106(d) is consistent with a coherent legislative policy to preclude a creditor from circumventing the need to obtain an enforcement order by simply 'realising' the security. That policy is apparent from ss. 142(1) and 113(3)(d) which are the gateways to s.106(d). Furthermore, that conventional interpretation achieves the policy—expressly stated in s.113(1)—that the security provided in relation to a regulated agreement cannot be enforced so as to benefit the creditor to any greater extent than would be the case if the security were not provided. The respondents' interpretation, on the other hand, would put a debtor who has provided security in a far better position than a debtor who has not provided security. Expressed differently, contrary to the policy objective stated in s.113(1), it would put the creditor in a worse position than if no security had been provided. On the respondents' argument, the debtor who has provided security is entitled under s.106(d) to repayment of all money paid by the debtor to discharge the debt and interest whether or not the money has come from the proceeds of sale of the security. A debtor who has not provided security, on the other hand, cannot recover any money paid in discharge of the debt unless he or she falls within the unfair relationship provisions of s.140A." (*London Scottish Finance Ltd (in administration), Re* [2013] EWHC 4047 (Ch).)

REALISE; REALISED. A testator's estate is "realised" when the shares of residue are receivable or de jure receivable on the completion of the administration of the estate or the expiration of the executor's year, whichever should first happen (*Re Petrie* [1962] Ch. 355).

Where articles of association of a company provide that "no dividend shall be payable except out of realised profits", the word "realised" "must have its ordinary meaning, which, if not equivalent to 'reduced to actual cash in hand', must at least be 'rendered tangible for the purpose of division . . . The meaning of the word is the direct converse of 'estimated'" (per Kay J., *Re Oxford Building Society*, 35 Ch. D. 502). Cp. "profits available for dividend", under AVAILABLE.

"Realised member" of a building society: see *Re Norwich & Norfolk Building Society*, 45 L.J. Ch. 785.

Direction to sell goods to "realise" so much net cash: see NET.

In the Insolvency Act 1986 s.283A(3), "realise" does not include effecting a sale of a beneficial interest for a future cash consideration before such time as the money is paid (*Lewis v Metropolitan Property Realisations Ltd* [2009] EWCA Civ 448).

REALISES. A trustee in bankruptcy who sells the estate's interest for deferred contingent consideration "realises" the interest for the purposes of s.283A of the Insolvency Act 1986 (*Lewis v Metropolitan Property Realisations Ltd* [2008] EWHC 2760 (Ch)).

REALISTIC. "A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]." (*Stemcor UK Ltd v Global Steel Holdings Ltd* [2015] EWHC 363 (Comm)).

REALISTIC IMITATION FIREARM. Stat. Def., Violent Crime Reduction Act 2006 s.38.

REALISTIC PROSPECT OF SUCCESS. "[15] As to what constitutes 'a realistic prospect of success' the case of ZT (Kosovo) was concerned with whether there was a difference between the tests under s.94 and that under rule 353. In ZT (Kosovo) Lord Justice Laws observed that 'I do not consider, with great deference, that the reasoning in ZT (Kosovo) is of great assistance in setting the bar, as it were, for the impact of the "realistic prospect of success" test in rule 353.' He went on to suggest that 'realistic prospect of success' means only more than a fanciful such prospect. I am content to proceed on that basis." (*LA, Re Judicial Review* [2010] Scot. C.S. CSOH 83.)

"Ex hypothesi Rule 353 involves the scenario in which a new claim, lawfully rejected by Border Agency, is at the same time properly judged by the Border Agency to have a realistic prospect of succeeding on appeal to an Immigration Judge. This hypothesis makes sense—whatever the rule-making ambition might have been—only if the 'realistic prospect' bar is set at a modest height. Counsel for both parties asked me to accept that a prospect anything 'more than fanciful' is a 'realistic prospect' for Rule 353 purposes . . . I do accept this. There is a hinterland of practice, usage and interpretation, certainly in English law, which makes it almost inevitable that this meaning should be assigned." (*M.A. (A.P.), Secretary of State for The Home Department* [2011] Scot. C.S. CSOH 8).

REALLY. See *Gibson v Muskett*, 11 L.J.C.P. 225, cited BONA FIDE; *Hudson v Gribble* [1903] 1 K.B. 517, cited DUTIES.

REALM. "The custom of the realm" means the common law of England: see CUSTOM.

“‘Out of the realme’, (*id est*) *extra regnum*; as much to say, as out of the power of the king of England as of his crowne of England: for if a man be upon the sea of England he is within the kingdom or realme of England, and within the ligeance of the king of England, as of his crowne of England. And yet *altum mare* is out of the jurisdiction of the common law, and within the jurisdiction of the lord admirall” (Co. Litt. 260A, B). A little further on Coke seems to cite Littleton as using “beyond the sea” and “out of the realm” as convertible terms; but in *King v Walker* (1 Bl. W. 286) Wedderburn, arg., said “these expressions have usually (though inaccurately) been used as synonymous terms”.

Probably, since and somewhat by force of the Crown Act 1603 (c.1), “the realm”, or “this realm”, in and since 1604, means generally “the realms and kingdoms of England, Scotland, and Ireland” (see hereon *King v Walker*, above). France is also mentioned in the statute, but that, of course, had ceased to be practical. See TERRITORIAL WATERS.

The “realm”, in the old Bankruptcy Acts for England, meant England and Wales, for those parts of the kingdom only were subject to the English bankruptcy law (*Williams v Nunn*, 1 Taunt. 270).

The words “within this realm”, in the Statute of Monopolies (c.3), applies to all the United Kingdom (*Robinson’s Patent*, 5 Moo. P.C. 65; *Morgan v Seaward*, 2 M. & W. 544; *Brown v Annandale*, 8 Cl. & F. 437); but not to the colonies (*Rolls v Isaacs*, 19 Ch. D. 268).

See BEYOND SEAS; ENGLAND; SEA; THREE ESTATES.

REALTY. This word briefly expresses what is meant by real estate, or real property. “Anything attached to or forming part of the realty” (Larceny Act 1916 (c.50) s.1(3)), was held to cover a movable army hut (*Billing v Pill* [1954] 1 Q.B. 70).

REAR. “Rear lamp”: Stat. Def., Road Traffic Act 1972 (c.20) s.76(2).

REASON. What was a good reason for having a firearm for which a certificate had been refused under Firearms Act 1937 (c.12) s.2(8), was a matter of discretion for Quarter Sessions (*Greenly v Lawrence* [1949] 1 All E.R. 241).

“Reason to believe” (Matrimonial Causes Act 1950 (c.25) s.16(2); now Matrimonial Causes Act 1965 (c.72) s.14) means what a reasonable man would believe and not what each individual petitioner would believe (*Thompson v Thompson* [1956] P. 414).

The expression “reasons for the award” in s.1(5) of the Arbitration Act 1979 (c.42) included the relevant facts on which the arbitrator’s conclusion was based and was not limited to the arbitrator’s reasoning (*Schiffahrtsagentur Hamburg Middle East Line v Virtue Shipping* [1981] 2 All E.R. 887).

A statement by an immigration officer that he is not satisfied that the potential visitor is genuinely seeking entry for only the limited period specified is a sufficient statement of “reasons” for his decision to refuse entry for the purposes of reg.4(1)(a) of the Immigration Appeals (Notices) Regulations 1984 (SI 1984/2040) (*R. v Secretary of State for the Home Department, Ex p. Swati* [1986] 1 All E.R. 717). A declared decision to deport an alien on the ground of national security was a “sufficient statement” of the “reasons” for deportation (*R. v Secretary of State for the Home Department, Ex p. Cheblak* [1991] 2 All E.R. 319).

He acts “against law and reason”: see UNWORTHY.

See ANY OTHER REASON; BY REASON; GOOD REASON; SPECIAL.

REASON RELATING TO. For treatment to amount to disability discrimination there must be a connection between the treatment and the disability (*Lewisham London Borough Council v Malcolm* [2008] UKHL 43).

REASON TO BELIEVE. For the purposes of s.4(3) of the Defamation Act 1996 (defence of offer to make amends not available where person knew or had reason to believe that the statement was false) determining whether a person knew or had reason to believe something requires an inquiry into what the person actually knew, not what he should have known. Knowledge that something was false can be imputed by reference to recklessness whether it was true or not, but not by reference to constructive knowledge arising out of negligence (*Milne v Express Newspapers* [2004] EWCA Civ 664).

In the phrase “knew or had reason to believe” in s.151(4) of the Road Traffic Act 1988, the words “reason to believe” are a separate threshold lower than knowledge (*McMinn v McMinn* [2006] EWHC 827 (QB)).

A test of reason to believe is not a test of balance of probabilities, but something less (*Jirehouse Capital v Beller* [2008] EWCA Civ 908).

REASONABLE. “The word ‘reasonable’ has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know” (per curiam in *Re a Solicitor* [1945] K.B. 368 at 371).

A direction to execute a settlement within six months or “such further period as my trustees shall think reasonable” was not void for uncertainty (*Re Burton’s Settlements, Scott v National Provincial Bank* [1955] Ch. 82).

As to what remuneration is “reasonable” under para.II of Table B of the Companies (Board of Trade) Fees Order 1929 (No.831) see *Re Phillips (Joseph)* [1964] 1 W.L.R. 369.

“Reasonable in all the circumstances” (Employment Protection (Consolidation) Act 1978 (c.44) s.28(3)). In assessing the reasonableness of amounts of time off claimed by a part-time union official for union activities an industrial tribunal was entitled to take into account time off taken by him for union activities on other occasions during the year. So that an extra 10 days to edit a union magazine was not “reasonable” in the case of a man who had already had twelve weeks leave during the year on union duties (*Wignall v British Gas Corporation* [1984] I.C.R. 716).

“Accommodation . . . reasonable for him to continue to occupy” (Housing Act 1985 (c.68) s.58(2A), as inserted by s.14 of the Housing and Planning Act 1986 (c.63)). The risk of violence in a particular neighbourhood could affect the reasonableness of occupation of the accommodation available to a woman (*R. v Broxbourne BC, Ex p. Willmoth* (1989) 21 H.L.R. 415). When considering whether it is reasonable for an applicant to continue to occupy accommodation, the authority should not confine their inquiries to the state of the accommodation itself but should have regard to its location (*R. v Wycombe DC, Ex p. Queenie Homes and Dean Homes* (1990) 22 H.L.R. 150). In determining whether it was “reasonable” for a applicant to continue to occupy her accommodation, the housing authority must have regard not only to the physical condition but also the suitability of the premises for all those (including in this case a new-born baby) affected by their decision (*R. v Medina BC, Ex p. Dee* (1992) 24 H.L.R. 562). Prior to reaching a decision on whether it was “reasonable” for an applicant to continue to occupy accommodation an authority should make a determination about the truth of relevant allegations (*R. v Northampton BC, Ex p.*

REASONABLE

Clarkson (1992) 24 H.L.R. 529), and undertake sufficient inquiries as to why a homeless applicant had left her accommodation (*R. v Tynedale DC, Ex p. McCabe* (1992) 24 H.L.R. 384).

(Administration of Justice Act 1970 (c.31) s.36; Administration of Justice Act 1973 (c.15) s.8.) The outstanding term of a mortgage should, in the absence of exceptional circumstances, be the starting point in determining how long it would be reasonable to keep a mortgagee out of possession so as to give the mortgagor time to pay any sums due under the mortgage (*Cheltenham and Gloucester Building Society v Norgan* [1996] 1 W.L.R. 343; [1996] 1 All E.R. 449). The question of what amounted to a "reasonable period" was a matter for the court to determine on the facts of each case (*National and Provincial Building Society v Lloyd* [1996] 1 All E.R. 630).

"Measures . . . reasonable for a person . . . to take" (Health and Safety at Work etc. Act 1974 (c.37) s.4(2)). When a person made non-domestic premises available as a place of work for persons not his employees, the reasonableness of the measures which he was required to take to ensure the safety of those premises, as required by this section, was to be determined in the light of his knowledge of the expected use for which the premises had been made available and the extent of his control and knowledge of the actual use thereafter (*Austin Rover Group v Inspector of Factories* [1988] Crim.L.R. 752).

"His conduct was reasonable" (Public Order Act 1986 (c.64) s.5(3)(c)). The reasonableness of conduct as a defence under this section is to be viewed objectively (*DPP v Clarke* [1991] 135 S.J. 135). It might be "reasonable" for the accused to use threatening behaviour in circumstances where he had been told by the police, in excess of their powers, that his property was being seized (*Kwasi Poku v DPP, The Times*, January 19, 1993).

"As the Tribunal may determine to be reasonable in the circumstances" (Copyright, Designs and Patents Act 1988 (c.48) s.119(3)). In determining what was "reasonable" under this section the Tribunal has a wide discretion. The rate which would have been paid by a willing buyer to a willing seller for the right to use the copyright work in public performances is a useful approach, but not a fixed or exclusive criterion of what would be "reasonable" (*Working Men's Club and Institute Union v The Performing Rights Society* [1992] R.P.C. 227).

"Reasonable to expect of him as a solicitor" (Solicitors Act 1974 (c.47) Sch.1A as inserted by Sch.15 to the Courts and Legal Services Act 1990 (c.41)). Prejudice to a client does not need to be shown before the professional services provided by a solicitor are found to have been not "of the quality which it is reasonable to expect".

"Reasonableness": Stat. Def., Unfair Contract Terms Act 1977 (c.50) s.11.

"In deciding whether a step by the authority is reasonable, regard may be had to its own resources." (*R. (Conville) v Richmond upon Thames London Borough Council* [2006] EWCA Civ 718 per Pill L.J. at [37].)

"28. The question is then whether, as Dr Krebs alleges, the defendant has acted unreasonably or otherwise than as a responsible public body in seeking to terminate his contract (Dr Krebs does not allege bad faith). That, in turn, raises the question whether breach of the obligation under cl.10 of the contract to 'act reasonably and as a responsible public body' can only be held to have occurred if, in the *AP Picture Houses v Wednesbury Corporation* [1948] 1 KB 223 sense, the defendant has acted in a way no other responsible or reasonable public body would do or whether the word 'reasonably' can have a wider meaning.

29. If contracts between the private parties require either party to act reasonably in any particular respect as when, for example, a contract gives a discretionary power to one of the parties to take some decision for the purposes of the contract, the courts have traditionally been reluctant to import principles of public law as a guide to construction. Thus in *The Product Star* where a charterparty entitled the owners of a vessel to decline to proceed to a port which they considered to be dangerous as a result of war, this court declined to import the *Wednesbury* test into an assessment whether the owners had made a reasonable decision that a port was dangerous as a result of the Iran-Iraq war. Leggatt LJ (with whom Balcombe and Mann LJJs agreed) said:

‘... the exercise of judicial control of administrative action is an analogy which must be applied with caution to the assessment of whether a contractual discretion has been properly exercised ... In my judgment the authorities show that not only must the discretion be exercised honestly and in good faith, but, having regard to the provisions of the contract by which it is conferred, it must not be exercised arbitrarily, capriciously or unreasonably.’ See *Abu Dhabi National Tanker Co v Product Star Shipping Ltd* [1993] 1 Lloyd’s Rep 397, 404.

30. Similarly in *Braganza v BP Shipping Ltd* [2013] EWCA Civ 230 and [2013] 2 Lloyd’s Rep 351 where a death in service payment to an employee was not payable if ‘in the opinion of BP or its insurers’ the death resulted from the employee’s wilful act or default, this court assessed the reasonableness of BP’s opinion without regard to any *Wednesbury* considerations.

31. In the light of those authorities, I do not think the word ‘reasonable’ in cl.10 of the contract should be read in a restricted *Wednesbury* sense even though Dr Krebs’s contract was made with a public body and even though cl.10 itself refers to the concept of a responsible public body. The fact that courts are now prepared to dilute the *Wednesbury* test in appropriate cases where the context so dictates, see *Kennedy v Information Commissioner* [2014] 2 WLR 808 per Lord Mance at paras 51–54, supports this conclusion.

32. In this respect, therefore, I differ from the judge who seems to have thought that as a matter of private law ‘reasonableness’ (even in the *Wednesbury* sense) did not come into the equation as a result of cl.11 of the contract. That way of looking at the matter would effectively negate cl.10 which cannot, in my view, be right. Clause 11 can mitigate the consequences of cl.10 (as I have already said) but cannot entitle a court to treat cl.10 as a dead letter.” (*Krebs v NHS Commissioning Board* [2014] EWCA Civ 1540.)

See CALCULATED TO BENEFIT; FAIR AND REASONABLE; REASONABLY; UNREASONABLE.

See also ACCOMMODATION; AVAILABLE; HOMELESS.

See ALL REASONABLE ENDEAVOURS.

REASONABLE ACTS. See ACTS.

REASONABLE ADVERTISEMENTS. As to what are “reasonable” advertisements and inquiries for the purposes of s.14(1)(a) of the Charities Act 1960 (c.58) see *Re The Henry Wood National Memorial Trust, Armstrong v Moiseiwitsch* [1966] 1 W.L.R. 1601.

REASONABLE AMOUNT. (Rules of the Supreme Court 1981 Ord.62 r.12.) The words “reasonable amount” in Ord.62 r.12 should be taken to represent the hypothetical solicitor having regard to the costs incurred by other solicitors in the

REASONABLE

locality for similar work based on the taxing officer's own knowledge and experience, but bearing in mind that his past taxations could be out of date (*L. v L. (Legal Aid Taxation)* [1996] 1 F.L.R. 873).

REASONABLE AND PROBABLE CAUSE. The question, in a case of false imprisonment against a police officer, whether he had reasonable and probable cause for making the arrest, or, in a case of malicious prosecution, whether the prosecutor had reasonable and probable cause for preferring the charge, is for the judge (*Hailes v Marks*, 30 L.J. Ex. 392; *Lister v Perryman*, L.R. 4 H.L. 521; *Panton v Williams*, 2 Q.B. 194); where the facts are in dispute, it is for the jury to find the facts, but whether those facts amount to reasonable and probable cause is an inference to be drawn by the judge (*Panton*). For "malicious prosecution", see *Herniman v Smith* [1938] A.C. 305. See Rose. N.P. (20th edn), 884 et seq., 928, 1147; Add. T. (7th edn), 222; *Kelly v Midland Great Western Railway*, I.R. 7 C.L. 8. See further *Cox v English, Scottish & Australian Bank* [1905] A.C. 168.

"Albeit somewhat archaic, the phrase 'reasonable and probable cause' is well understood. Reference is often made to the judgment of Hawkins J in *Hicks v Faulkner* (1878) 8 QBD 167, at 171, where he gave the following definition: '... an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.' That exposition of the law was approved in *Herniman v Smith* [1938] AC 305 by Lord Atkin. The question of 'reasonable and probable cause' itself breaks down into two issues which have to be considered in the light of the evidence before the court. The first is generally described as being a subjective question; namely, whether the prosecutor had no honest belief in the relevant charge. The second is the objective question of whether the circumstances were such that they would lead an ordinary and prudent man to believe in the charge. Sometimes, it is possible to infer the absence of an honest belief from a lack of 'reasonable and probable cause'; but not the other way about. Malice cannot of itself lead to an inference that 'reasonable and probable cause' was lacking: *Glinski v McIver* [1962] AC 726, 744." (*Howarth v Chief Constable of Gwent Constabulary* [2011] EWHC 2836 (QB).)

"Lawful or reasonable cause": see **LAWFUL CAUSE**.

See **REASONABLE CAUSE**.

REASONABLE APPREHENSION. See **IMPOSSIBLE**.

REASONABLE CARE. (Patents Act 1977 (c.37) s.28(3)(a).) The proprietor of a patent, who gave clear and unambiguous instructions to an agent to renew the patent within the prescribed time, was held to have taken "reasonable care" to see that the renewal fee was paid as required under this section, even though the agent failed to carry out the instruction (*Re Textron* [1989] R.P.C. 441).

See **ORDINARY CARE**; **REASONABLE DILIGENCE**.

REASONABLE CAUSE. The power of striking out a pleading "on the ground that it discloses no reasonable cause of action, or answer" (R.S.C. Ord.25 r.4, now Ord.18 r.19) "is only intended to be had recourse to in plain and obvious cases" (*Hubbuck v Wilkinson* [1899] 1 Q.B. 86; *Drummond-Jackson v British Medical Association* [1970] 1 W.L.R. 688).

By the Scots Act 1573 (c.55), “Quhatsumeuer persoun or persounis joynit in lauchfull matrimonie, husband or wife, diuertis fra vtheris companie, without ane ressonnabill caus alledgeit or deducit befor ane judge and remainis in their malicious obstinacie be the space of four yeiris, and in the meantime refusis all preuie admonitiounis”, might have had divorce decreed against him or her: a spouse’s conduct causing the other mental distress sufficient to interfere with health, and menaces causing well-founding apprehension of physical restraint (especially if culminating in an act of personal violence), was “reasonable cause” for leaving that spouse within this provision (*Mackenzie v Mackenzie* [1895] A.C. 384).

“Reasonable cause to believe” (Restrictive Trade Practices Act 1956 (c.68) s.14(1)): see *Registrar of Restrictive Trading Agreements v Smith (WH) & Son* [1969] 1 W.L.R. 1460.

“Reasonable cause to believe that for medical reasons a specimen of breath cannot be provided” (Road Traffic Act 1972 (c.20) s.8(3)(a), as substituted by Sch.8 to the Transport Act 1981 (c.56)). For a constable to have “reasonable cause to believe” under this section it is not necessary that he should determine whether the medical reason is a medically recognised condition, only whether it could be (*Dempsey v Catton* [1986] R.T.R. 194). What was a “reasonable cause to believe” was a question of fact to be objectively decided by the magistrate, and, if it was objectively determined as a matter of fact that there was a reasonable cause, it was immaterial whether the police constable actually believed it or not (*Davis v DPP* [1988] R.T.R. 156; *White v Proudlock (Note)* [1988] R.T.R. 163).

“Without reasonable cause” (Bail Act 1971 (c.63) s.6(1)). A defendant who handed his charge sheet to his solicitor without making any note of the date on which he was to surrender to custody, and mistakenly formed the opinion that he was to surrender on a later date, was held not to have “reasonable cause” for not surrendering on the due date (*Laidlaw v Atkinson, The Times*, August 2, 1986).

“Reasonable cause for desertion”: see DESERTION; REASONABLE EXCUSE; CAUSE.

Enabling a prosecution for an offence in the state requested to effect an extradition is not a “reasonable cause” for delaying extradition under the Extradition Act 2003 (*Governor of Wandsworth Prison v Kinderis* [2007] EWHC 998 (Admin); see also *Re Owens* [2009] EWHC 1343 (Admin)).

See REASONABLE AND PROBABLE CAUSE; HAS REASONABLE CAUSE.

REASONABLE CHARGE. “Reasonable charge” (Housing Act 1957 (c.56) s.111(1)): an increase in the rent of council houses made by a local authority was reasonable and intra vires (*Luby v Newcastle-Under-Lyme Corporation* [1964] 2 W.L.R. 275).

REASONABLE CONDITIONS. See JUST.

REASONABLE COSTS. A success fee of 40 per cent was not unreasonable and could be recovered as part of the claimant’s costs in a settlement consisting of an agreement to pay, inter alia, reasonable costs. The same applied to a premium of £350 paid for after the event insurance to cover the risk of liability for costs in the case of the claim failing (*Callery v Gray (Nos 1 and 2)* [2002] 1 W.L.R. 2000, HL).

REASONABLE DILIGENCE. “Reasonable diligence” within the meaning of s.32(1) of the Limitation Act 1980 (c.58) does not mean the doing of everything possible, but the doing of that which, in this case of a mistaken attribution, an ordinarily prudent buyer of a valuable work of art would do in the circumstances (*Peco Arts Inc v Hazlitt Gallery* [1983] 1 W.L.R. 1315).

REASONABLE

(Bills of Exchange Act 1882 (c.61) s.46(2)(a).) Where presentment of a bill of exchange became illegal on the place indicated becoming enemy territory, the facts were such that “after reasonable diligence” presentment could not be effected. Presentment was therefore dispensed with and the drawer remained liable (*Cornelius v Banque Franco-Serbe* [1942] 1 K.B. 29).

See DUE DILIGENCE; ORDINARY CARE; “contributory negligence”, under NEGLIGENCE.

REASONABLE DOUBT. “A ‘reasonable doubt’ is simply that degree of doubt which would prevent a reasonable and just man from coming to a conclusion . . . The phrase ‘reasonable doubt’ can be used just as aptly in a civil case or a divorce case as in a criminal case. . . . The only difference is that, because of our high regard for the liberty of the individual, a doubt may be regarded as reasonable in the criminal courts which would not be so in the civil courts” (per Denning L.J. in *Bater v Bater* [1951] P. 35).

“I have never yet heard any court give a real definition of what is a ‘reasonable doubt’, and it would be very much better if that expression was not used. Whenever a court attempts to explain what is meant by it, the explanation tends to result in confusion rather than clarity. It is far better, instead of using the words ‘reasonable doubt’ and then trying to say what is a reasonable doubt, to say to a jury: ‘You must not convict unless you are satisfied by the evidence given by the prosecution that the offence has been committed’” (per Lord Goddard C.J., *R. v Summers* [1952] 1 T.L.R. 1164).

It is wrong to define a “reasonable doubt” as one for which one could give a reason if asked, or as the sort of doubt which could influence a prudent man in the conduct of everyday affairs (*R. v Ching* (1976) 63 Cr.App.R. 7).

REASONABLE EFFORTS. “Reasonable efforts” to effect personal service of a writ “do not simply mean ‘reasonable’ in the mind of the man who makes them according to his belief of the facts; but they mean ‘reasonable’ according to the actual facts” (per Pollock C.B., *Flower v Allan*, 33 L.J. Ex. 83).

“Reasonable efforts to obtain payment of the debt” (s.7 of the Bankruptcy Act 1869 (c.71)); see *Re Tupper*, 9 Ch. 312.

REASONABLE ENDEAVOURS. See New Law Journal, May 25, 2007, p.727.

See ENDEAVOURS.

REASONABLE EXAMINATION. See *Pinnock v Lewis & Peat* [1923] 1 K.B. 690, distinguished in *Ayscough v Sheed Thomson & Co*, 131 L.T. 610.

The RIBA Standard Form of Contract No.6, cl.24(f) requires a “reasonable examination” at the end of the defects liability period. The fact that defects might have been discovered from inspections made while work was in progress does not invalidate the reasonableness of an examination which showed no defect when made at the specified time (*East Ham Corporation v Bernard Sunley & Sons* [1966] A.C. 406).

REASONABLE EXCUSE. “Reasonable excuse” for carrying a firearm (Prevention of Crime Act 1953 (c.14) s.1(1)): a person using an air rifle at a shooting gallery and deliberately injuring a woman with it had a “reasonable excuse” for carrying it (*R. v Jura* [1954] 1 Q.B. 503). It is not “reasonable” within this section for a taxi driver to carry with him in his taxi a rubber hose with a metal insertion (*Grieve v Macleod*, 1967 S.L.T. 70). For the defence of “reasonable excuse” to be successful it must be shown that there was an imminent particular threat affecting the particular

circumstances in which the "offensive weapon" is carried (*Evans v Hughes* [1972] 3 All E.R. 412). In deciding whether there is a "reasonable excuse" within this section the court should ask whether a reasonable man would accept that in the particular circumstances it was a proper occasion for carrying such a weapon. To do so for purposes of attempted suicide was held not to be a proper occasion, even though that is no longer an offence (*Bryan v Mott* (1975) 62 Cr.App.R. 71).

(Firearms Act 1968 (c.27) s.19.) A belief that a firearms' certificate was valid and constituted lawful authority was not capable of amounting to a "reasonable excuse" under s.19, since a belief in lawful authority based on facts which is true could not amount to lawful authority, was not capable of being a defence of reasonable excuse to a charge under s.19 (*R. v Jones* [1995] 3 All E.R. 139). See also **LAWFUL EXCUSE**.

"Reasonable excuse" for carrying an offensive weapon: see *MacLeod v Green* [1954] C.L.Y. 3670.

"Reasonable excuse" (Control of Pollution Act 1974 (c.41) s.58(4)). Having no liability for a nuisance in contract or cost is no "reasonable excuse" for failing to comply with a local authority notice to abate the nuisance (*Lambert Flat Management v Lomas* [1981] 1 W.L.R. 898).

(Prevention of Crime Act 1953 (c.14) s.1(1).) A police truncheon is an offensive weapon, but wearing one as part of a police uniform for a fancy dress party was held to be a "reasonable excuse" for having it in a public place for the purposes of this section (*Houghton v Chief Constable of Greater Manchester* (1987) 84 Cr.App.R. 319). Forgetfulness of possession is not a "reasonable excuse" for the purposes of this section (*R. v McCalla* (1988) 87 Cr.App.R. 372). The defence of "reasonable excuse" is not open to individuals who arm themselves to repel violence which they themselves provoke by creating a situation in which violence is likely to occur (*Malnik v DPP* [1989] Crim.L.R. 451).

"Without reasonable excuse, fails to provide a specimen" (Road Traffic Act 1972 (c.20) s.8(7), as amended by Transport Act 1981 (c.56) Sch.8; now Road Traffic Act 1988 (c.52) s.7(6)). Repugnance on the part of the accused was capable of providing a "reasonable excuse" for not providing a blood sample for analysis under the requirements of this section if it amounts to a phobia recognised by medical science (*West Yorkshire Metropolitan Police v Johnson* [1986] Crim. L.R. 66). Physical inability to provide a breath specimen in spite of strenuous efforts to do so could amount to a "reasonable excuse" for failure (*Cotgrove v Cooney* [1987] R.T.R. 124). But the fact that a breath test machine is difficult to use is not a reasonable excuse for failing to provide a specimen of breath (*Dawes v Taylor* [1986] R.T.R. 81). The question whether a defendant has a "reasonable excuse" for not providing a specimen does not arise until he attempts to provide one (*Teape v Godfrey* [1986] R.T.R. 213). Section 58 of the Police and Criminal Evidence Act 1984 (c.60) (giving a person in custody the right to see a solicitor) did not provide a "reasonable excuse" for refusing to provide a specimen until after the arrival of the solicitor (*DPP v Billington* [1988] 1 W.L.R. 535; *Francis v Chief Constable of Avon and Somerset* [1988] R.T.R. 250; *Grennan v Wescott* [1988] R.T.R. 253). Fear of AIDS is not a "reasonable excuse" (*DPP v Fountain* [1988] R.T.R. 385). The fact of having just given a blood sample for hospital purposes was not a "reasonable excuse" for not giving another when required to do so by a constable (*Kemp v Chief Constable of Kent* [1987] R.T.R. 66). An unlawful arrest did not provide a "reasonable excuse" for refusing to provide a specimen (*Hartland v Alden* [1987] R.T.R. 253). The statement by the accused that he

was incapable of doing so was not in itself a “reasonable excuse” for failing to provide a sample of breath; some additional evidence, such as that of a doctor, was necessary to show that he was unable to do so (*Grady v Pollard* [1988] R.T.R. 316). The fact that the accused had offered a urine specimen could not constitute a “reasonable excuse” for refusing to supply a blood specimen (*Grix v Chief Constable of Kent* [1987] R.T.R. 193). The absence of a warning of the consequences of a failure to supply a specimen, or the failure to understand that warning, could be a “reasonable excuse” within the meaning of this section (*Chief Constable of Avon and Somerset Constabulary v Singh* [1988] R.T.R. 107). The fact that a request to provide a specimen of blood had previously been made did not constitute a “reasonable excuse” for refusing to comply with a request for a breath specimen (*DPP v Boden* [1988] R.T.R. 188). Where the accused had not been told that in some circumstances a urine sample might be acceptable he was held to have had a “reasonable excuse” for failing to provide a blood sample (*DPP v Gordon*; *DPP v Griggs* [1990] R.T.R. 71).

Insistence by a motorist that he should first be permitted to read the code of practice dealing with the detention, treatment and questioning of persons by police officers was not a “reasonable excuse” for refusing to supply a breath specimen when requested to do so before he had finished reading it (*DPP v Cornhill* [1990] R.T.R. 254). Stress following a motor accident is not a “reasonable excuse” (*DPP v Eddowes* [1990] Crim. L.R. 428). An unlawful arrest does not provide a defendant with a “reasonable excuse” for failing to provide a specimen (*R. v Thomas* [1990] Crim. L.R. 269). Following a solicitor’s advice is not a “reasonable excuse” for failing to provide a specimen (*Dickinson v DPP* [1989] Crim. L.R. 741). A defendant was held to have had a “reasonable excuse” for failing to provide specimens of breath until after he had seen a solicitor in a case where he had been provided with forms stating that he had a right to see a solicitor “at any time” (*Hudson v DPP*, *The Times*, May 28, 1991). It was not a “reasonable excuse” for failing to provide a breath specimen for analysis that the defendant’s self-induced intoxication had rendered him unable to understand the procedure (*DPP v Beech* [1992] Crim. L.R. 64). Stress caused by self-precipitated agitation was not sufficient “reasonable excuse” for failure to comply with this section (*DPP v Ambrose (Jean-Marie)* [1992] R.T.R. 285). A mistaken belief that he was entitled to read the codes of practice before providing a breath specimen was not a “reasonable excuse” for the accused’s refusal to supply one (*DPP v Whalley* [1991] R.T.R. 161). The defendant had a “reasonable excuse” for failing to provide a specimen under s.7(6) of the 1988 Act where justices found, without medical evidence, that shock and inebriation rendered him physically incapable of doing so (*DPP v Pearman* [1992] R.T.R. 407). A genuine phobia of catching AIDS amounted to a “reasonable excuse” (*De Freitas v DPP* [1993] R.T.R. 98; *DPP v Kinnersley* [1993] R.T.R. 105). The fact that the motorist had tried as hard as he could to provide the requested specimen was not of itself a “reasonable excuse” for failure (*Smith (Nicholas) v DPP* [1992] R.T.R. 413). It was not a “reasonable excuse” for failing to provide a specimen of breath for a motorist to insist on seeing a solicitor before doing so (*Salter v DPP* [1992] R.T.R. 386). The fact that the motorist was driving on private land when requested to provide a breath specimen was not a reasonable excuse for failing to comply (*Hawes v DPP* [1993] R.T.R. 116). The fact that the accused had been treated for nervous asthma was not a “reasonable excuse” (*DPP v Curtis* [1993] R.T.R. 72). Being of a nervous disposition and waiting for a solicitor’s advice was not a reasonable excuse for failing to provide a specimen (*DPP v Kirk* [1993] C.O.D. 99).

Hyperventilation can be a "reasonable excuse" for the purposes of this section (*DPP v Szarzyński* [1993] R.T.R. 364). Failure by a defendant to provide a breath specimen because of the pain occasioned by a road traffic accident although he had earlier provided a sample of breath was not a "reasonable excuse" (*DPP v Radford* [1995] R.T.R. 86).

"Did without reasonable excuse refuse to ... answer such question" (Financial Services Act 1986 (c.60) s.178(2)). A financial journalist who refused to disclose the sources of his information concerning insider-dealing in the City could not claim that the protection granted by s.10 of the Contempt of Court Act 1981 (c.49) provided a "reasonable excuse" for so doing where such disclosure was necessary for the prevention of crime (*Re an Inquiry under the Company Securities (Insider Dealings) Act 1985* [1988] 2 W.L.R. 33). See also NECESSARY; PREVENTION.

"Reasonable excuse" (Finance Act 1985 (c.54) ss.15, 33). Ignorance of the requirement to do so is not a "reasonable excuse" for failure to notify the Commissioners of Customs and Excise of a liability to be registered for value added tax (*Neal v Commissioners of Customs and Excise* [1988] S.T.C. 131). Where a person honestly and reasonably believes that his activities do not amount to the carrying on of a business he has a "reasonable excuse" for failure to notify liability for VAT registration (*Prior (M.J.) and Prior (K.E.) v Customs and Excise Commissioners* [1992] S.T.I. 912).

"Reasonable excuse" (Finance Act 1985 (c.54) ss.14(6), 19(6)(b), 33(2)). An insufficiency of funds by itself was not a "reasonable excuse" for the non-payment of value added tax, except in the rarest of cases; but insufficiency by reason of unforeseeable misfortune might be a reasonable excuse (*Commissioners of Customs and Excise v Harris; Same v Salevon* [1989] S.T.C. 907). The non-receipt of a surcharge liability notice was not a "reasonable excuse" for the purposes of this section (*Customs and Excise Commissioners v Medway Draughting and Technical Services; Same v Adplates Offset* [1989] S.T.C. 346). The fact that funds were available when a cheque might be expected to be presented did not provide a "reasonable excuse" for its dishonour on a later presentation (*Customs and Excise Commissioners v Palco Industry Co* [1990] S.T.C. 594). Financial difficulties brought about by late payment or non-payment on the part of debtors could amount to a "reasonable excuse" within the meaning of this section (*Customs and Excise Commissioners v Steptoe* [1992] S.T.C. 757). Where taxpayers adopted a system of payment by credit-transfer under which the Commissioners allowed them an extra seven days they were entitled to believe that their obligations had been satisfied and had, therefore, a "reasonable excuse" for late payment (*Barney & Freeman v Customs and Excise Commissioners* [1990] V.A.T.T.R. 19). To provide "a reasonable excuse" for a misdeclaration of VAT the default must be the result of unforeseen events, not failure in management oversight of the accounting system (*Merseyside Police Authority v Customs and Excise Commissioners* (1991) 2 V.A.T.T.R. 152). The inaccuracy of a subordinate employee relied upon to prepare a return did not provide a "reasonable excuse" for a misdeclaration within the meaning of s.14(6) (*Victoria Alloys (UK) v Customs and Excise Commissioners* (1992) 2 V.A.T.T.R. 163). An honest error based on an incorrect assumption which was corrected within the time limit for furnishing the return could constitute a "reasonable excuse" (*T. & D. Kennedy v Customs and Excise Commissioners* (1991) 2 V.A.T.T.R. 157). Where a taxpayer formed a mistaken view of the date of a transaction of an unfamiliar type on the advice

REASONABLE

of his accountant he had a “reasonable excuse” for a misdeclaration (*Enterprise Safety Coaches v Customs and Excise Commissioners* (1991) 1 V.A.T.T.R. 74). The fact that an error is made by an employee working without supervision does not necessarily preclude a company from relying on a defence of “reasonable excuse” for a misdeclaration (*Fritz Bender Metals (UK) v Customs and Excise Commissioners* (1991) 1 V.A.T.T.R. 80).

“Any person who without reasonable excuse fails to comply” (Banking Act 1987 (c.22) s.39(11)). A notice issued by the Bank of England under s.39(3)(a) of this Act requiring the production of documents overrode a High Court injunction against the disclosure of the documents; so that the existence of the injunction could not provide a “reasonable excuse” for failure to comply with the notice (*A v B Bank (Bank of England intervening)* [1992] 1 All E.R. 778).

“Any person who without reasonable excuse fails to comply” (Banking Act 1987 (c.22) s.42(4)). Fear of self-incrimination is not a “reasonable excuse” for failure to comply with a requirement imposed by this section (*Bank of England v Riley*, *The Times*, November 1, 1990).

“Without reasonable excuse” (Control of Pollution Act 1974 (c.41) s.58(4)). A birthday celebration was not a “reasonable excuse” for nuisance by noise (*Wellingborough DC v Gordon* [1991] J.P.L. 874).

“Reasonable excuse for not doing anything required to be done” (Taxes Management Act 1970 (c.9) s.118(2)). Where a taxpayer knew that no assessment had been raised although substantial gains had been realised, it was open to a commissioner to infer neglect for which there was no “reasonable excuse” within the meaning of this section (*Kingsley v Billingham* [1992] S.T.C. 132).

“Any person who without reasonable excuse . . .” (Criminal Justice Act 1987 (c.38) s.2(13)). The fact that a person has been charged with a criminal offence is not a “reasonable excuse” for failing to comply with a requirement imposed on him under this section (*Re Bishopsgate Investment Management*, *The Times*, April 26, 1993).

A panic attack could amount to a reasonable excuse for failure to provide a specimen, even where proof of the attack rested on personal evidence running contrary to medical evidence (*R. (Falzarano) v Crown Prosecution Service* [2001] R.T.R 217, Q.B.D.).

“The context in which the phrase ‘reasonable excuse’ is used in each section provides, by necessary implication, clarification of the nature of the excuse. It is an explanation for the defendant’s *inability* to comply with the statutory obligation.” (*R. v Tabnak* [2007] EWCA Crim 380.)

Having lodged an appeal is not a reasonable excuse for failing to comply with the requirements of a sentence (*West Midlands Probation Board v Sadler* [2009] EWHC 15 (Admin)).

A reasonable excuse in relation to possession of a document for the purposes of the Terrorism Act 2000 could include a purpose that might infringe another provision of criminal or civil law (*R. v K.* [2008] EWCA Crim 185).

See WITHOUT REASONABLE EXCUSE.

Cp. LAWFUL EXCUSE; REASONABLY.

REASONABLE EXPENSE. “Capable at reasonable expense of improvement . . .” (Housing Act 1974 (c.44) s.89(3)(c)). In determining whether a house could be improved at “reasonable expense” for the purposes of this section, the court has to consider its sale value in the hands of a landlord, and the effect on that value of the

presence of tenants and other rights of continuing occupation (*FFF Estates v London Borough of Hackney* [1981] 1 All E.R. 32).

REASONABLE FACILITIES. In deciding whether the legal adviser of a remand prisoner has been afforded “reasonable facilities” for interviewing him within the meaning of s.37(1) of the Prison Rules 1964 (No.388) all circumstances should be taken into account, including such matters as travelling distance, timing of visiting hours and interviewing facilities at the prison (*R. v Secretary of State for the Home Department, Ex p. McAvoy, The Times*, July 12, 1984).

See also FACILITIES.

REASONABLE FINANCIAL PROVISION. (Inheritance (Provision for Family and Dependents Act 1975 (c.63) s.1(1).) In considering whether “reasonable financial provision” had been made in a will the court was not entitled to take into account legally unenforceable assurances given by other beneficiaries under the will (*Rajabally v Rajabally* (1987) 17 Fam. Law 314). The test for considering whether the disposition of a deceased’s estate fails to make “reasonable financial provision” for a surviving spouse, having regard to all of the matters listed in s.3, is objective (*Moody v Stevenson* [1992] 2 W.L.R. 640).

(Inheritance (Provision for Family and Dependents) Act 1975 (c.63) s.1(1).) Past failure to discharge obligations which were now defunct could not give rise to a claim for “reasonable financial provision”. The need to reduce or discharge a mortgage did not amount to “reasonable financial provision” required for maintenance (*Re Jennings (Deceased)* [1994] Ch. 286).

The financial needs of an applicant were just one of the factors to be taken into account when determining a claim under the 1975 Act (*Re Krubert (deceased)* [1996] 3 W.L.R. 959).

REASONABLE FORCE. For discussion about the meaning and operation of a power to use reasonable force in the context of a power of entry, see *DPP v Meaden* [2003] EWHC 3005 (Admin).

REASONABLE FORESIGHT. The words “all reasonable foresight and care” (British Railways Board Conditions of Carriage, No.8(f)(i)) require a higher standard than the word “negligence” (*Hutchison (Robert) & Co v British Railways Board*, 1970 S.L.T. (N.) 72).

REASONABLE GROUNDS. (Occupiers’ Liability Act 1984 (c.3) s.1.) Whether an occupier of land had “reasonable grounds to believe” that a trespasser might come into the vicinity of a danger on the land was to be determined by considering the actual state of affairs on the ground when the injury occurred (*White v St. Albans City and DC, The Times*, March 12, 1990).

“Reasonable grounds to believe” meant that it was necessary to demonstrate that the occupiers had actual knowledge of a relevant fact or knew facts which provided grounds for a relevant belief established by evidence (*Swain v Puri* [1996] 10 C.L. 499).

(Prevention of Terrorism (Temporary Provisions) Act 1984 (c.8) s.12.) Instructions from a superior officer to effect arrest did not give the arresting officer “reasonable grounds” for suspecting a person to be involved in acts of terrorism. When deciding whether an arresting officer had “reasonable grounds” the court was not required to look beyond what was in the officer’s mind, and his suspicion did not need to be based on his own observations but could be based on what he had been told, and it was not

REASONABLE

necessary for him to prove that the facts founding his suspicions were true (*O'Hara v Chief Constable of the Royal Ulster Constabulary* [1997] 1 All E.R. 129).

REASONABLE GROUNDS TO BELIEVE. "I am quite satisfied that 'reasonable grounds to believe' is not to be equated with either 'reasonable grounds to suspect' or with constructive knowledge. Of course, it is right to say that the use of the phrase imports an objective element. In this context... what is required first is to demonstrate that the identifiable individual responsible for the article knew of a relevant fact or facts. The objective test then comes into play when the court decides in applying the s.4 [of the Defamation Act 1996—defence available unless claimant proves that the newspaper knew or had reason to believe that the statement complained of was false] defence provisions, whether such knowledge provided reasonable grounds to believe positively that the words complained of were false." (*Milne v Express Newspapers* [2003] 1 All E.R. 482, Q.B.D.).

REASONABLE GROUNDS TO SUSPECT. The fact that a person randomly checked for contraband was found to be carrying it did not provide retrospective grounds justifying his being searched. Reasonable grounds for suspicion could be gained from profiles or trends (*R. (Hoverspeed Ltd) v Commissioners of Customs and Excise* [2003] 2 W.L.R. 950, CA).

REASONABLE INCOME. A legacy of a "reasonable income" for life is sufficiently certain and is therefore valid (*Re Golay's Will Trusts, Morris v Bridgewater* [1965] 1 W.L.R. 969).

REASONABLE INDEMNITY. See INDEMNITY.

REASONABLE JUSTIFICATION. "Reasonable justification" (Sex Discrimination Act 1975 (c.65) s.65(3)). On the grounds that it is reasonable to expect that employers recommended by an industrial tribunal to avoid sexual discrimination will need some time to implement the recommendation, it was held that the employers had "reasonable justification" for not having done so within nine months of the recommendation (*Nelson v Tyne & Wear Passenger Transport Executive* [1978] I.C.R. 1118).

REASONABLE LET. "Reasonable let or impediment": see LET.

REASONABLE MAN. When considering, on a charge of murder, whether a "reasonable man" (Homicide Act 1957 (c.11) s.3) would have been provoked to lose his self-control, the jury should be told that the reasonable man in question is a person having the power of self-control to be expected of an ordinary person of the sex and age of the accused, but in other respects sharing such of the accused's characteristics as they think would affect the gravity of the provocation to him (*R. v Camplin* [1978] A.C. 705).

When considering on a charge of murder, whether a "reasonable man" (Homicide Act 1957 (c.11) s.3) would have been provoked the defendant's history (of glue-sniffing) and the circumstances in which he was placed at the particular time should be taken into account (*R. v Morhall* [1995] 3 All E.R. 659).

REASONABLE MEANS. Taking "reasonable means" for enforcing mine regulations (s.50 of the Coal Mines Regulation Act 1887 (c.58)): see *Stokes v Checkland*, L.T. 457, cited AGENT. See Coal Mines Act 1911 (c.50) s.75; *Stokes v Mitcheson* [1902] 1 K.B. 857; *Anderson v Atkinson*, 99 L.T. 22.

REASONABLE NOTICE. Reasonable notice to determine a license to occupy land, see *Lowe v Adams* [1901] 2 Ch. 598, and *Wilson v Tavener* [1901] 1 Ch. 578, both cited LICENSE; NOTICE.

REASONABLE OPPORTUNITY. See *Reeve v Berridge*, 20 Q.B.D. 523, and *Molyneux v Hawtrey* [1903] 2 K.B. 487, both cited CONSTRUCTIVE; OPPORTUNITY.

“Reasonable opportunity”, under s.8 of the Maritime Conventions Act 1911 (c.57): see *The Largo Law*, 123 L.T. 560.

Whether a tenant has given a reasonable opportunity of making a valuation within the meaning of s.12 of the Agricultural Holdings Act 1923 (c.9) is a question of fact: see *Dale v Hatfield Chase Corp* [1922] 2 K.B. 282; *Ministry of Agriculture v Dean* [1924] 1 K.B. 851; see also *Barbour v McDouall* [1914] S.C. 844. See now Agricultural Holdings Act 1948 (c.63) s.34(2).

“In this statutory context, a distinction is maintainable between giving a reasonable opportunity and giving such opportunity as will succeed in obtaining accommodation. The duty to provide a reasonable opportunity falls short of a duty to provide long-term accommodation.” (*R. (Conville) v Richmond upon Thames London Borough Council* [2006] EWCA Civ 718 per Pill L.J. at [40].)

REASONABLE PERIOD. (Child Care Act 1980 (c.5) s.12B(5), as added by Sch.1 to the Health and Social Services Adjudications Act 1983 (c.41).) Although a local authority has power under this subsection to postpone for a “reasonable period” the making of a decision concerning parental access to a child under its care, it must nevertheless reach a decision with some urgency so as not to deny the parents their rights (*R. v Bolton Metropolitan BC, Ex p. B* (1986) 84 L.G.R. 78).

REASONABLE PRECAUTIONS. “All reasonable precautions and . . . all due diligence” (Consumer Protection Act 1961 (c.40) s.2; Trade Descriptions Act 1968 (c.29) s.24; Consumer Safety (Amendment) Act 1986 (c.29) s.12). Defendants had to do some positive act in order to satisfy the criteria required by these sections. It is not enough, if charged with selling goods that fail to satisfy statutory requirements, to show that the orders placed with the wholesalers were on condition that the goods conformed with those requirements (*Riley v Webb* [1987] Crim. L.R. 477). A system whereby the sampling of imported goods was at the rate of one packet in 10,000 dozen, and the results were only reported to the importer if they were adverse, did not satisfy the standard of care required by these Acts (*Rotherham Metropolitan BC v Raysum (UK)*, *The Times*, April 27, 1988).

“All reasonable precautions and . . . all due diligence” (Food Safety Act 1990 (c.16) s.21(1)). A meat trader who placed reliance on a meat inspector’s certificate was held to have complied with the requirements of this section (*Carrick DC v Taunton Vale Meat Traders*, *The Times*, February 15, 1994).

“All reasonable precautions to ensure the safety of passengers” (Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Regulations 1936 (No.619) reg.4(c)). A driver who, knowing that his bus could not be started without a jerk, nevertheless drove off before all passengers were seated, had not taken “all reasonable precautions” within the meaning of this regulation (*Steff v Beck* [1987] R.T.R. 61).

“All reasonable precautions and . . . all due diligence” (Highways Act 1971 (c.41) s.31(6)). Where on hiring out a skip the owners make it clear that it must be properly lit at night if left on the highway, they have taken “all reasonable precautions” and exercised “all due diligence” within the requirements of this section (*Lambeth LBC v Saunders Transport* [1974] R.T.R. 319).

REASONABLE PRICE. In construing a contract for the sale of goods “at a price to be agreed by the parties” the court may imply an agreement to pay a reasonable price (*Foley v Classique Coaches* [1934] 2 K.B. 1, 11).

REASONABLE

As to proving what is a “reasonable price” for beer and spirits supplied to a tied house, see *Courage v Carpenter* [1910] 1 Ch. 262, cited SPIRITUOUS LIQUOR: see also *Arnold v Radford*, 17 T.L.R. 301.

“The reasonable price of the articles” (Landlord and Tenant (Rent Control) Act 1949 (c.40) s.3(1)(b)) meant the price which was reasonable between the parties for the articles as they were, fitted and situate in the premises, without regard to extraneous circumstances such as the desire of the tenant to obtain a tenancy (per Denning L.J. in *Eales v Dale* [1954] 1 Q.B. 539).

REASONABLE PROSPECT. Where it was to be determined whether a landlord had a reasonable prospect of obtaining planning permission, the correct test was whether there was a real chance rather than whether it was more likely than not that permission would be granted (*Cadogan v McCarthy and Stone (Developments) Ltd, The Independent*, June 17, 1996).

REASONABLE PROVISION. “Reasonable provision for maintenance” (Inheritance (Family Provision) Act 1938 (c.45) s.1(1) as amended, see Family Provision Act 1966 (c.35) Sch.3): see *Re Watkins* [1949] 1 All E.R. 695; *Re Borthwick* [1949] Ch. 395; *Re Goodwin*, *Goodwin v Goodwin* [1969] 1 Ch. 283; *Re Thornley*, *Thornley v Palmer* [1969] 1 W.L.R. 1037; *Re Gregory*, *Gregory v Goodenough* [1970] 1 W.L.R. 1455.

“Reasonable provision” (Matrimonial Causes (Property and Maintenance) Act 1958 (c.35) s.3(1)): see *Roberts v Roberts* [1965] 1 W.L.R. 560.

See REASONABLE FINANCIAL PROVISION.

REASONABLE REGULATIONS. Reasonable regulations by a telegraph company: see *M'Andrew v Electric Telegraph Co*, 25 L.J.C.P. 26.

REASONABLE RENT. For discussions on what notice should be taken of the costs of improvements in assessing what is a “reasonable rent for the demised premises” within the terms of a lease, see *Cuff v J&F Stone Property Co* [1978] 2 All E.R. 833, and *Ponsford v HMS Aerosols* [1979] A.C. 63.

REASONABLE SALVAGE. See SALVAGE.

REASONABLE SEARCH. For factors to be considered in determining whether a reasonable search has been conducted in accordance with CPR 31.7, see *Digicel (St. Lucia) Ltd v Cable & Wireless Plc* [2008] EWHC 2522 (Ch).

REASONABLE SECURITY. “Reasonable security” (Bankruptcy Act 1914 (c.59) s.16(10)). The court should take a broad view of the meaning of these words, particularly where the scheme is favourable to the creditors and has been accepted by them (*Re Murray (A Debtor)* [1969] 1 W.L.R. 246).

See SECURITY.

REASONABLE SKILL. See SKILL.

REASONABLE STEPS. The requirements in R.S.C. Ord.113 that “reasonable steps” be taken to identify persons occupying land means that the person claiming possession must take such steps as are reasonable in the particular circumstances. In some cases, such as this (the occupation of the Senate House by University students), no steps or very scanty steps could reasonably be taken (*Warwick University v De Graaff* [1975] 1 W.L.R. 1126).

An owner of a vehicle which was deliberately left unattended temporarily in a car park with the keys in the ignition was in breach of a condition in the policy that “all reasonable steps should be taken to protect the vehicle against loss or damage” when the car was stolen and damaged, even though the owner underestimated or did not

contemplate the risk of theft or though his absence would only be short (*Devco Holder and Burrows & Paine v Legal & General Assurance Society* [1993] 2 Lloyd's Rep. 567). An assured who had considered the security position of leaving jewellery worth £24,000 in the glove compartment of his car while leaving the car unattended for a short time but keeping it in his view was not reckless and had taken "all reasonable steps to safeguard his property" (*Sofi v Prudential Assurance Co* [1993] 2 Lloyd's Rep. 559).

REASONABLE TERMS. "Reasonable terms" (Patents Act 1949 (c.87)) means the price a purchaser of an invention is prepared to pay (*Re Kambourian's Patent* [1961] R.P.C. 403).

REASONABLE TIME. Where a contract has to be performed (*Attwood v Emery*, 26 L.J.C.P. 73; *Briddon v Great Northern Railway*, 28 L.J. Ex. 51; *Hales v London & North Western Railway*, 32 L.J.Q.B. 292; *Taylor v Great Northern Railway*, L.R. 1 C.P. 385), or a duty discharged (*Goodwyn v Cheveley*, 28 L.J. Ex. 298), within a reasonable time (or within no specified time), which connotes a reasonable time (*Nosotti v Averbach*, 79 L.T. 414) such time will have to be determined according to the circumstances of the case, and with particular reference to the means and ability of the person by whom the contract is to be performed, or the duty discharged (*Postlethwaite v Freeland*, 5 App. Cas. 599; *Hick v Raymond* [1893] A.C. 22; see on this last case per Lord Herschell, *Carlton SS Co v Castle Co* [1898] A.C. 490-492; CUSTOMARY; *Toms v Wilson*, 32 L.J.Q.B. 33; *Brighty v Norton*, 32 L.J.Q.B. 38). An obligation to perform a contract within "a reasonable time" does not require so speedy a fulfilment as one to be done "directly" or "as soon as possible" (Add. C. (9th edn), 125). All the circumstances must be taken into account in deciding what is a reasonable time (*Monkland v Jack Barclay* [1951] 2 K.B. 252). And this is so of a contract for work and labour where reasonable notice, making time of the essence of the contract, has been given (*Charles Rickards v Oppenheim* [1951] 1 K.B. 616). Similarly, all relevant circumstances as they exist at the date of the hearing must be taken into account by a judge considering whether to make a possession order under the Rent Restriction Acts (*Rhodes v Cornford* [1947] 2 All E.R. 601). See further REASONABLE HOUR; USUAL AND CUSTOMARY MANNER.

"Reasonable time" (Sale of Goods Act 1893 (c.71) s.18(4)(b)) is a term that must be interpreted according to the facts of each case. Therefore, in a contract for the sale or return of a car, the "reasonable time" after which the buyer is deemed to have accepted may be determined with reference to the conditions of the car trade (*Poole v Smith's Car Sales (Balham)* [1962] 1 W.L.R. 744).

"After the lapse of a reasonable time" (Sale of Goods Act 1979 (c.54) s.35(1)) means a reasonable time to inspect the goods and try them out generally. The nature of a defect discovered ex post facto was irrelevant in assessing what was a "reasonable time" within the meaning of this section. So that the purchaser of a new car, which had a minor defect which subsequently caused the engine to seize up and render it not of merchantable quality, was not entitled to rescission of the contract and repayment of the purchase price as he had by then retained the car for a reasonable time within the meaning of this section (*Bernstein v Pamson Motors (Golders Green)* [1987] 2 All E.R. 220).

"Within such reasonable time" (Companies Act 1985 (c.6) s.212(4)). One and a half working days was not "reasonable" for the purposes of this section (*Re Lonrho* [1990] Ch. 695).

REASONABLE

Where the parties to a contract for the sale of land were obliged to complete within a “reasonable time” what was “reasonable” was determined by the facts of the case, and not always the period set out in *Johnson v Humphrey* ([1946] 1 All E.R. 1990) measured by “the legal business which has to be performed in connection with the investigation of title and the preparation of documents” (*Dean v Upton, The Times*, May 10, 1990).

“Within a reasonable time” (Landlord and Tenant Act 1988 (c.26) s.1(3)). A landlord who failed for nearly three months to respond to the tenant’s request for leave to assign, and had then delayed further, had failed to communicate his decision “within a reasonable time”, as required by this section (*Midland Bank v Chart Enterprises* [1990] 44 E.G. 68).

“Reasonable time” (Uniform Customs and Practice for Documentary Credits (1983 Revision) art.16) was held to include time necessary in the circumstances for consultation with experts or with the applicant for credit (*Bankers Trust Co v State Bank of India* [1991] 2 Lloyd’s Rep. 443).

REASONABLE USE. As to the reasonable use of premises by defendant in an allegation of nuisance, see *Sanders-Clark v Grosvenor Mansions Co* [1900] 2 Ch. 373, cited NUISANCE.

“Reasonable use of the highway” (Roads Improvement Act 1925 (c.68) s.1(2)): a tree hanging over a highway hindered the reasonable use of the highway (*Hale v Hants & Dorset Motor Services* [1947] 2 All E.R. 628).

REASONABLE WEAR AND TEAR. See WEAR AND TEAR.

REASONABLENESS. “Requirement of reasonableness” (Unfair Contract Terms Act 1977 (c.50) s.2(2)). An exclusion clause in a plant hire agreement providing for the hirer to be liable for the negligence of the owners’ employee operating the plant, was held not to satisfy the “reasonableness” required by this section (*Phillips Products v Hyland (Note)* [1987] 1 W.L.R. 659). A disclaimer of liability for negligence by a valuer instructed by a mortgagee, in circumstances where it was known that the valuation would probably be relied upon by the prospective purchaser, did not satisfy the “requirement of reasonableness” imposed by this section (*Smith v Bush (Eric S.)*; *Harris v Wyre DC* [1989] 17 E.G. 68).

REASONABLY. A trustee who allows his co-trustee to advance trust funds upon an improvident or improper security, or “who swallows wholesale what is said by his co-trustee”, did not act “reasonably” or “honestly”, within s.3 of the Judicial Trustees Act 1896 (c.35)—see now Trustee Act 1925 (c.19) s.61—even though the co-trustee was the solicitor to the trust nominated by the author of the trust and was a reliable person (*Re Turner* [1897] 1 Ch. 536, applied in *Re Linsley* [1904] 2 Ch. 785, but was criticised in *Re Mackay*, 80 L.J. Ch. 237; *Re Allsop* [1914] 1 Ch. 1; *Re Second East Dulwich Building Society*, 68 L.J. Ch. 196). In making or allowing investments a trustee must act as fairly prudent man would deal with his own money (*Re Stuart* [1897] 2 Ch. 583).

So, a trustee does not act “reasonably” if he allows his co-trustee to receive, and (without inquiry or good reason) to retain, trust funds (*Wynne v Tempest* [1897] 1 Ch. 110), cited INDEMNITY. See further *Re Atkinson*, 48 S.J. 641. See Trustee Act 1925 (c.19) ss.8, 61.

So, an executor does not act “reasonably” if he does not advertise for claims as soon as possible, and he will not get relief for parting with the assets to beneficiaries after being served with a writ for a claim which in the event is substantiated, even though he

honestly believed, and had some grounds for believing, that the claim was unfounded (*Re Kay* [1897] 2 Ch. 518, cited *TRUST*). An executor who on reasonable grounds refrains from bringing an action to recover a debt due to his testator's estate, may not quite bring himself within the decision in *Clack v Holland* (24 L.J. Ch. 13), but the spirit of Lord Romilly's remarks in that case ought to be applied, and if there was reasonable ground for believing that an action would have been "ineffectual", then, in not suing, the executors would have acted "reasonably, and ought fairly to be excused" under s.3 of the Judicial Trustees Act 1896 (c.35)—Trustee Act 1925 (c.19) s.61—(*Re Roberts*, 76 L.T. 479); so, if on the will, there was a reasonable doubt as to whether the testator intended the debt to be called in at once (*Re Grindey* [1898] 2 Ch. 593); so, of payment to legatees in ignorance of a claim against the estate (*Re Kay*, 41 S.J. 722), *secus* of such payments after commencement of an action to enforce the claim, although its extent was then unascertained (*Re Kay*, above).

The words of the section are "has acted honestly and reasonably, and ought fairly to be excused"; but as in the large majority of cases of breach of trust so, generally, under this section "the word 'honestly' may be left out of consideration" (per Kekewich J., *Perrins v Bellamy* [1898] 2 Ch. 521, affirmed [1899] 1 Ch. 797), in which case trustees, who were sued by a tenant for life for selling leaseholds without being thereunto authorised by a power, were relieved because they had acted "reasonably"—they had sold thinking they had a power, had sold on the advice of a competent surveyor, and the sale was the best thing that could have been done for the benefit of all parties, and especially having regard to those in remainder who were the children of the tenant for life. On the other hand, an unreasonable but honest postponement of realising non-trustee investments, is not excusable, not even though, in some instances, profit has resulted from the postponement (*Ravenshaw v Barker*, 77 L.T. 712).

"Reasonably attributable to fire": for the meaning of these words in a marine insurance policy, see *Symington v Union Insurance Co of Canton*, 97 L.J.K.B. 646.

"Acted reasonably in treating it as a sufficient reason for dismissing the employee" (Employment Protection (Consolidation) Act 1978 (c.44) s.57(3)). Employers who denied an employee his contractual right to appeal against his dismissal had not "acted reasonably" within the meaning of this section (*West Midlands Co-operative Society v Tipton* [1986] 1 All E.R. 513). The test of reasonableness in determining the fairness of a dismissal under this section is purely objective and it is not necessary for an employer to have considered consultation for a dismissal to be fair (*Duffy v Yeomans & Partners* [1993] I.C.R. 862).

"Could reasonably be expected to have known" (Social Security Act 1975 (c.14) s.152(4)). A director cannot rely on his lack of business acumen or his lack of interest in the company's affairs for his lack of knowledge of the company's failure to make payments due under this section, because any reasonable director would have known (*Department of Health and Social Security v Evans* [1985] 2 All E.R. 471).

"Person who might reasonably be expected to reside with him" (Housing (Homeless Persons) Act 1977 (c.48) s.16). Where an applicant for accommodation under this Act had known a man for 10 years and had had a son by him, it was reasonable to expect that he would reside with her (*R. v Wimbourne DC, Ex p. Curtis* (1985) 18 H.L.R. 79).

"Reasonably be expected to live with the respondent" (Matrimonial Causes Act 1973 (c.18) s.1(2)(b)). The test of reasonableness is nothing more than whether an intelligent person, knowing the parties and the circumstances, would consider it

REASONABLY

reasonable for the petitioner to live with the respondent (*Buffery v Buffery* [1988] 2 F.L.R. 365). A sensitive wife could not “reasonably” be expected to continue to live with a dogmatic and chauvinistic husband (*Birch v Birch* [1992] 1 F.L.R. 564).

Surveyor “reasonably believed” to be “able and practical”: see SURVEYOR.

“Period . . . reasonably required for carrying out the work”: see PERIOD.

“Reasonably be expected to be completed”: see COMPLETED.

See OUGHT; PROPERLY; REASONABLE.

REASONABLY BE EXPECTED TO RESIDE. This phrase as used in the Housing Act 1996 refers to an impersonal, objective, social norm to be applied in allocating housing resources (*Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2009] UKHL 7).

REASONABLY COMPARABLE. In determining whether alternative employment offered to a local government employee is “reasonably comparable” for the purposes of regs 7(1)(f), 11(1)(e)(ii) of the Local Government (Compensation) Regulations 1974 No.463, the fact that an increased salary is offered is of marginal importance, and may be irrelevant (*Hereford and Worcester CC v Tolley; Same v Craske* [1976] I.C.R. 450). Where, after reorganisation under the Water Act 1973 (c.37), a man who had held two posts with separate salaries was offered alternative employment at a salary comparable with only one of them, that alternative employment was not “reasonably comparable” with the previous one, as both the previous salaries should have been taken into account (*Harper v North West Water Authority* (1978) 76 L.G.R. 631).

REASONABLY CREDIBLE MATERIAL. Paragraph 606 of the Code of Conduct of the Bar of England and Wales requires a barrister not to allege fraud unless he has before him “reasonably credible material” which establishes a prima facie case. For that purpose “material” is not confined to evidence in admissible form (*Medcalf v Mardell* [2002] 3 W.L.R. 172 at 201, HL per Lord Rodger of Earlsferry).

REASONABLY FIT. Goods “reasonably fit” for a particular purpose (Sale of Goods Act 1979 (c.54) s.14(3)). See *Henry Kendall & Sons v William Lillico & Sons Ltd* [1969] A.C. 31. A second hand car of which the engine seized up within three weeks was held not to be reasonably fit for the purpose (*Crowther v Shannon Motor Co* [1975] 1 W.L.R. 30).

As to when a house was “reasonably fit” for human habitation within meaning of Housing Act 1909 (c.44) ss.14 and 15, see *Fisher v Walters*, 42 T.L.R. 499; *Walter v Hobbs*, 23 Q.B.D. 458, cited CONDITION. As to Housing Act 1925 (c.14) s.1, see *Morgan v Liverpool Corp* [1927] 2 K.B. 131; *Stanton v Southwick* [1920] 2 K.B. 642. See now Housing Act 1936 (below) s.2.

“Reasonably fit for human habitation” (Housing Act 1936 (c.51) s.2(1)): the breaking of a sashcord in a bedroom window held to render the room not reasonably fit for human habitation within s.2(1) of the Housing Act 1936 (*Summers v Salford Corp* [1943] A.C. 218). A lessor was not liable where he had not received notice of want of repair (*McCarrick v Liverpool Corp* [1947] A.C. 219). On s.9(1) see *Daly v Elstree Rural DC* [1948] 2 All E.R. 13.

REASONABLY FULFIL. The proviso in a lease that the tenant must have “reasonably fulfilled the covenants” was held not to mean that he should fulfil the covenants in a reasonable manner, but that he might exercise his discretion in respect of the covenants, so long as he did so in a reasonable way (*Gardner v Blaxill* [1960] 1 W.L.R. 752).

REASONABLY INCURRED. The court had jurisdiction to order the National Coal Board to pay costs of an application “reasonably incurred” where it was fair and reasonable to litigate as far as the Court of Appeal (*Williams v Sharpe* [1949] Ch. 595).

The “costs reasonably incurred” in R.S.C. Ord.62 r.28(4) are “the costs of and incidental” (see INCIDENT; INCIDENTAL) to the proceedings in question, and can include costs for work done before any proceedings commenced (*Re Gibson’s Settlement Trusts; Mellors v Gibson* [1981] Ch. 179).

See EXPENSES.

REASONABLY NECESSARY. A trustee loses the protection of the Trustee Act 1893 (c.53) s.17(3) (now s.23 of the Trustee Act 1925 (c.19)) if he permits a banker or solicitor who receives trust money to retain it “longer than is reasonably necessary . . . to pay or transfer the same to the trustee”; that proviso is as applicable to Scotland as to England, and must be exigently observed in spite of specious excuses by the banker or solicitor (*Wyman v Paterson* [1900] A.C. 271; *Re Sheppard* [1911] 1 Ch. 50).

“Additions to, or alterations in, buildings reasonably necessary or proper to enable the same to be let” (Sch.3 to the Settled Land Act 1925 (c.18)): that does not mean something that is absolutely necessary, but means “what a reasonable and prudent owner would do if he were absolutely entitled to the property” (per Buckley J., *Re Stanford* [1901] 1 Ch. 440, cited LET). See further ADDITION.

“As it stands the phrase [‘reasonably necessary’ (Iron and Steel Act 1949 (c.72) s.13)] is a contradiction in terms” (per Wynn-Parry J., in *Re Naylor Benzon Mining Co* [1950] Ch. 567).

In deciding whether a restriction is “reasonably necessary” within s.21(1)(a) of the Restrictive Trade Practices Act 1956 (c.68) the court must consider whether a reasonable and prudent man who is concerned to protect the public against injury would enforce this restriction if he could (*Re Chemists’ Federation Agreement (No.2)* [1958] 1 W.L.R. 1192).

It would be difficult to justify restrictions as “reasonably necessary” under s.21(1)(d) of the Restrictive Trade Practices Act 1956 (c.68) unless the predominant supplier was disposed to ask unreasonable terms (*Re National Sulphuric Acid Association’s Agreement* [1963] 1 W.L.R. 848).

The question of what is “reasonably necessary for the satisfactory development or use” of a cleared area within s.43(2) of the Housing Act 1957 (c.56) is one of fact and not one of planning policy (*Coleen Properties v Minister of Housing and Local Government* [1971] 1 W.L.R. 433).

(Local Government (Miscellaneous Provisions) Act 1976 (c.57) s.47.) The imposition of a condition of the issue of new licences for taxis that they must be adapted to take wheelchairs was held to be “reasonably necessary” within the meaning of this section (*R. v Manchester City Council, Ex p. McHugh* (1989) 153 J.P.N. 593).

REASONABLY OBTAINABLE. By virtue of s.37(3)(e) of the New Towns Act 1981 (c.64) as substituted by s.1(4) of the New Towns and Urban Development Corporations Act 1985 (c.5), the Commission for New Towns had to dispose of surplus land for the “best reasonably obtainable” consideration. The use of the word “reasonably” was held not to imply that the Commission could, on moral or ethical grounds of supposed fairness to the persons from whom it had been compulsorily acquired, take a price for the land that was below the best obtainable (*Tomkins v Commission for the New Towns* (1988) 28 R.V.R. 219).

REASONABLY PRACTICABLE. A direction that a set of affirmative and negative rules shall be observed “so far as is reasonably practicable” will not, unless under very exceptional circumstances indeed, apply to the negative rules. “It is always possible not to do that which you are forbidden to do” (per Day J., *Wales v Thomas*, 16 Q.B.D. 340); and it was accordingly held in that case that the rule in s.51 of the Coal Mines Regulation Act 1872 (c.76), prohibiting firing a shot into a mine until the men were out of it, was unqualified by the words at the commencement of the section that the rules thereby laid down “shall be observed so far as is reasonably practicable”.

“So far as is reasonably practicable” (Factories Act 1937 (c.67) s.25(1) as amended, Factories Act 1961 (c.34) s.28(1)) does not mean that a factory floor must be kept free from obstructions and slippery substances at all times but that all reasonable measures must be taken to keep it free (*Braham v J. Lyons & Co* [1962] 1 W.L.R. 1048; *Jenkins v Allied Ironfounders* [1970] 1 W.L.R. 304). If a precaution is practicable it must be taken unless in the whole circumstances, that would be unreasonable.

(Factories Act 1937 (c.67) s.26(1), Factories Act 1961 (c.34) s.29(1).) The words “so far as is reasonably practicable” qualify the duty to provide “safe” means of access. These words show that the duty is not absolute, but depends on what is reasonably practicable, having regard to the degree of risk and the steps necessary to eliminate the risk (*McCarthy v Coldair* [1951] 2 T.L.R. 1226). In a case where a canteen worker slipped on a wet floor and injured her ankle it was held that the defendants by employing a good man to clean the floors had discharged their duty under s.29(1) to keep the place of work safe so far as is “reasonably practicable” (*Ashdown v Jonas Woodhead & Sons* [1975] K.I.L.R. 27).

“Reasonably practicable” (Factories Act 1937 (c.67) s.26(2), Factories Act 1961 (c.34) s.29(2)) has been held to refer to the means of ensuring safety not the provision thereof (*McWilliam v Sir William Arrol & Co Ltd* (1961) S.L.T. 265; (1961) S.C. 134). But it has also been held that it is not “reasonably practicable” to ensure the safety of access across an area where independent contractors are

In deciding what measures are “reasonably practicable” within the meaning of s.2(1) of the Health and Safety at Work Act 1974 (c.37), the degree of risk has to be weighed against the sacrifice involved. The section does not impose an absolute duty, and where the sacrifice is disproportionately heavy compared to the likely risk it is not “reasonably practicable” that it should be made (*West Bromwich Building Society v Townsend* [1983] I.C.R. 257).

It is not “reasonably practicable” (Electricity Regulations 1908 (No.1312) reg.2) to place guards on overhead electric wires while work was being done on the wires themselves (*Howell v APV Paramount*, 3 K.I.R. 567).

“Not reasonably practicable” (Employment Protection Act 1975 (c.71) s.35(2)(c)). In considering whether or not it was “reasonably practicable” for an employee to give the required notice of her intention to return to work after the birth of her child, the relevant question is whether she knew or ought to have known of her rights (*Nu-Swift International v Mallinson* [1979] I.C.R. 157).

“Not reasonably practicable for the employer to comply” (Employment Protection Act 1975 (c.71) s.99(8)). Mere ignorance of the existence of the statutory provisions for consultation with the union was held to be insufficient to justify the conclusion that it was “not reasonably practicable for the employer to comply with” the provisions (*Union of Construction, Allied Trades & Technicians v H Rooke & Son* (1978) 13 I.T.R. 310).

“Reasonably practicable” (Employment Protection (Consolidation) Act 1978 (c.44) s.67(2)). The advice of a third party that the claimant should delay putting in a claim for unfair dismissal until the internal appeal processes had been exhausted was not a ground for contending that it was not “reasonably practicable” to present a claim in time (*Croydon Health Authority v Jaufurally* [1986] I.C.R. 4). But where a claimant only discovered too late that her dismissal had not, as she had thought, been for reasons of redundancy, it was held that it had not been “reasonably practicable” for her to present the complaint in time (*Machine Tool Industry Research Association v Simpson* [1988] I.R.L.R. 212). In considering whether, in the circumstances, it had or had not been “reasonably practicable” to present a case of unfair dismissal before the expiry of the statutory time limit the expression “reasonably practicable” should be looked at in a common sense way, and an industrial tribunal was entitled to fix a reasonable period after the expiry of the statutory time limit (*James W Cook and Co (Wivenhoe) v S. Tipper* [1990] I.R.L.R. 386). There is no general principle that a claimant could not rely on erroneous advice from a third party to establish that it was not “reasonably practicable” to present a case of unfair dismissal within the time limits prescribed by this section (*Jean Sorelle v Rybak* [1991] I.C.R. 127). A decision to await the outcome of criminal proceedings was not a ground for contending that it was not “reasonably practicable” to present a claim for unfair dismissal in time (*Trevelyan's (Birmingham) v Norton* [1991] I.C.R. 488). Where an application was posted to the tribunal on Friday, May 19, but did not arrive until Tuesday, May 23, i.e. one day out of time, it was held that the tribunal had not erred in finding on the evidence that it was not reasonably practicable for the applicant to have presented his application within time. The tribunal were entitled to find as a matter of fact that the applicant could reasonably have expected his application to be delivered within time in the ordinary course of the post (*St. Basil's Centre v McCrossan* [1991] I.R.L.R. 455). It was held that a tribunal was entitled to find that it was not reasonably practicable for a complainant to present his complaint on time in circumstances where he had been misled by both a solicitor and an employee of the tribunal (*London International College v Sen* [1993] I.R.L.R. 333). But confusion between an employee and his union as to which of them was to initiate the employee's claim for unfair dismissal was not a matter which rendered it impracticable to have presented the application in time (*Dowty Aerospace Gloucester v Ballinger*, *The Times*, March 5, 1993). Where an employee, who had made a complaint of unfair dismissal more than three months after the termination of his employment after learning of the matters on which he based the complaint, subsequently learnt of other matters and amended his complaint, the industrial tribunal accepted that it had not been reasonably practicable for the employee to present his claim on time (*Marley (UK) v Anderson* [1994] I.C.R. 295). Where a claim for unfair dismissal was sent by post but never arrived, and had to be resubmitted out of time, it was held that it would have been reasonable to check before time ran out whether the original claim had been received by the tribunal (*Capital Foods Retail v Corrigan* [1993] I.R.L.R. 430).

“Not reasonably practicable for the complaint to be presented before the end of... three months” (Employment Protection (Consolidation) Act 1978 (c.44) s.67(2)). The reasonable practicability of presenting a complaint depended upon awareness of the specific grounds of complaint, not awareness of a right to complain (*Marley (UK) Ltd v Anderson* [1996] I.C.R. 728).

REASONABLY

“Not reasonably practicable to secure his attendance” (Police and Criminal Evidence Act 1984 (c.60) s.68(2)(a)(ii)). The question whether it was reasonably practicable to secure the attendance of a witness was to be considered not only as at the time when the trial commenced but against the whole background to the case (*R. v Bray* (1989) 88 Cr.App.R. 354). It was not possible to claim that it was “not reasonably practicable” to secure the attendance of two witnesses from Bogota in circumstances where it was held that the prosecution should have done more to discover the reason for the refusal to attend and to make it clear that the Crown would pay the witnesses’ fares and expenses (*R. v De Arango (Gonzales); Same v Orozco (Restrepo); Same v Loaiza (Medina)* (1993) 96 Cr.App.R. 399). The reasonable practicability of securing the attendance of a witness, on an application by the prosecution to allow his statement to be read, was to be judged as at the date of the application (*R. v French; Same v Gowhar, The Times*, March 25, 1993).

It was “reasonably practicable” for a complainant to bring an action for unfair dismissal within three months of the effective date of termination of her employment even though the law at that time afforded no protection against unfair dismissal for those working less than 21 hours per week (*Biggs v Somerset CC, The Times*, January 29, 1996).

The phrase requiring a party to comply with the terms of an order of the court as far as was “reasonably practicable” was sufficiently general to embrace financial considerations as well as those which were physically feasible (*Jordan v Norfolk CC* [1994] 4 All E.R. 218).

Stat. Def., Oaths Act 1961 (c.21) s.1(2).

For the approach to be taken in determining what is reasonably practicable in the context of different statutory public duties, see *Friends of the Earth v Secretary of State for Business Enterprise and Regulatory Reform* [2009] EWCA Civ 810.

“This was founded on a passage in Redgrave’s Health and Safety, 6th edition (2008), at para.[2.51]: “‘Reasonably practicable’, as traditionally interpreted, is a narrower term than “physically possible” and implies that a computation must be made in which the quantum of risk is placed in one scale and the sacrifice, whether in money, time or trouble, involved in the measure necessary to avert the risk is placed in the other; and that, if it be shown that there is a gross disproportion between them, the risk being insignificant in relation to the sacrifice, the person upon whom the duty is laid discharges the burden of proving that compliance was not reasonably practicable.’ It was common ground between counsel before us that that represents the correct approach to determining under reg.6(2) whether it was reasonably practicable to carry out the work safely otherwise than at height.” (*Bhatt v Fontain Motors Ltd* [2010] EWCA Civ 863.)

“Mr. Holgate concluded that the word ‘practicable’ in this context: ‘. . . indicates that Parliament expected that substantial compliance should be achieved, and therefore that the presence or absence of any prejudice to the ratepayer caused by a period of “delay” should be capable of being a relevant consideration.’ . . . It is not easy to discern from the references in the 1988 Act and the 1989 Regulations why some obligations have to be undertaken ‘as soon as practicable’ and others ‘as soon as reasonably practicable’. In some environments the difference between those two formulations can be of very profound importance. The most obvious is in the field of health and safety legislation when the absence of the qualification ‘reasonably’ is

usually understood to circumscribe an appeal to financial considerations as a reason for failing to take action.” (*North Somerset District Council v Honda Motor Europe Ltd* [2010] EWHC 1505 (QB).)

“19. The effect, therefore, is that local authorities have a statutory duty to accommodate within their area so far as this is reasonably practicable. ‘Reasonable practicability’ imports a stronger duty than simply being reasonable. But if it is not reasonably practicable to accommodate ‘in borough’, they must generally, and where possible, try to place the household as close as possible to where they were previously living. There will be some cases where this does not apply, for example where there are clear benefits in placing the applicant outside the district, because of domestic violence or to break links with negative influences within the district, and others where the applicant does not mind where she goes or actively wants to move out of the area. The combined effect of the 2012 Order and the Supplementary Guidance changes, and was meant to change, the legal landscape as it was when previous cases dealing with an ‘out of borough’ placement policy, such as *R. (Yumsak) v Enfield London Borough Council* [2002] EWHC 280 (Admin), [2003] HLR 1, and *R. (Calgin) v Enfield London Borough Council* [2005] EWHC 1716 (Admin), [2006] HLR 4, were decided.” (*Nzolameso v City of Westminster* [2015] UKSC 22.)

See *R. (Q) v Secretary of State* [2003] 3 W.L.R. 365, CA.

See also AS SOON AS PRACTICABLE; PRACTICABLE.

“As soon as reasonably practicable”: see AS SOON AS.

See SO FAR AS REASONABLY PRACTICABLE.

REASONABLY REQUIRED. “Reasonably required” (Rent Act 1968 (c.23) Sch.3 case 8). Where a landlord, in financial difficulties, sought possession of a second-floor flat so that he could either sell the second, thirdly and fourth floors together, or sell just the third and fourth floors and live on the second, it was held that, in view of the uncertainty of his prospects as to money and length of time of occupation of the second floor, it was impossible for the court to find that he really “required” it for his residence (*Rowe v Truelove* (1976) 241 E.G. 533). An owner-occupier seeking possession under case 10 of this Schedule, where “required” is not qualified by the adverb “reasonably”, has merely to show that he genuinely wants and intends to occupy the house as a residence for himself or for members of his family (*Kennealy v Dunne* [1977] Q.B. 837).

The phrase “reasonably required” in s.21(1)(g) of the Restrictive Trade Practices Act 1956 (c.68) would seem to allow more latitude than would be permissible if the word “necessary” or even the phrase “reasonably necessary” had been employed (*Re Black Bolt and Nut Association Agreement’s* (No.3), L.R. 6 R.P. 1).

“Such care as . . . was reasonably required” (Highways Act 1980 (c.66) s.58(1)). A six-monthly inspection of a highway, the surface of which was susceptible to water penetration, was held not to amount to such care as was “reasonably required” within the meaning of this section (*Jacobs v Hampshire CC*, *The Times*, May 28, 1984).

REASONABLY SO CALLED. See HOUSE.

REASONABLY SUFFICIENT. In considering whether the accommodation offered was “reasonably sufficient” within the meaning of s.5(1)(f) of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17), the court had to have regard to all the relevant circumstances; including considerations of health, character,

REASONABLY

sex and social amenity, and whether it was sufficient not only for the tenant but for all those persons who usually and properly resided with him, including lodgers: see *Cheverton v Ede* [1921] 2 K.B. 30.

See also ACCOMMODATION.

REASONABLY SUITABLE. See SUITABLE.

REASONABLY SUSPECTS. Pawnbrokers Act 1872 (c.93) s.34: see *Howard v Clarke*, 20 Q.B.D. 558.

(Public Order Act 1936 (c.6) s.7(3).) In circumstances where a constable has to make a spur-of-the-moment decision in an emergency it is reasonable for him to suspect that a mere disturbance might develop into a breach of the peace (*G. v Chief Superintendent of Stroud Police* [1987] Crim. L.R. 269).

REASONS. Inheritance (Family Provision) Act 1938 (c.45) s.1(7), which deals with the admissibility of evidence on applications under the Act, is not confined to evidence of the reasons given by the testator for making the dispositions made by the will or for not making any further provision, as the case may be, but extends to evidence of facts from which the court can infer the reasons of the testator for making the dispositions made by his will, or for not making any provision, or any further provision, as the case may be (*Re Smallwood* [1951] Ch. 369).

REBATE. See ACCOUNT.

REBEL. “Thou art a rebel”: held, not slander (*Fountain v Rogers*, Cro. Eliz. 878).

REBELLION. A “rebellion”, e.g. in an exception to a fire policy, involves the idea of an attempt to set up an usurped power (per Mansfield C.J., *Langdale v Mason*, Park 968, cited CIVIL COMMOTION).

“The difference between a rebellious mob and a common mob is that the first is high treason, the latter a riot or a felony” (per Wilmot C.J., *Drinkwater v London Assurance*, 2 Wils. 363, cited USURPED POWER).

Cowel says that a “rebellious assembly” is a gathering together of 12 persons, or more”, for an unlawful purpose. Cp. UNLAWFUL ASSEMBLY.

See LEVY WAR; RESTRAINTS OF KINGS.

REBUILD. See DEMOLISH.

REBUILDING. “Rebuilding the principal mansion house on settled land” (s.13(iv) of the Settled Land Act 1890 (c.69); Settled Land Act 1925 (c.18) Sch.3 Pt 1 (xxv)) does not include repairs and improvements (*Re De Teissier* [1893] 1 Ch. 153; *Re De Tabley*, 75 L.T. 328; *Re Willis* [1902] 1 Ch. 15; *Re Foster’s Settled Estates* [1922] W.N. 53). But where the greater part of the mansion house is pulled down and reconstructed, though the reconstruction be in a modernised and enlarged manner and the walls of another part are utilized therein, that is a “rebuilding” within the section (*Re Walker* [1894] 1 Ch. 189). In that case North J., dealing with this word, said: “I think it is a question of fact in each particular case. Supposing most of the house front were pulled down and a small part left and the rest of the house were rebuilt, it could not be said that there was not a ‘rebuilding’. Again, if the house were burnt and the walls were left standing and made use of in erecting the new house, there would none the less be a ‘rebuilding’. Nor would the introduction of alterations and enlargements make any difference in that respect. And I do not think it would make any difference if the site were slightly shifted. If the house were built at a distance that would be another matter. I do not think, however, it follows that every rebuilding would be a rebuilding authorised by the section. For example, supposing a tenant for life of a large estate or his predecessor had been content to live in some mere farmhouse or a small

villa residence, if he were to erect a large mansion with all the requirements suited to his position as the owner of such an estate, I do not think that ought to be considered a 'rebuilding' within the enactment. I think there must be really a substantial rebuilding, and not merely alterations and enlargements". *Re Wright* (83 L.T. 159) is an example of what comes within these concluding words. See ADDITION; IMPROVEMENT; per Lopes L.J., *Re Gerard* [1893] 3 Ch. 252. See further *Re Legh* [1902] 2 Ch. 274; *Re Kensington*, 21 T.L.R. 351; *Re Fife's Trusts* [1902] 2 Ch. 348.

As to whether settled money can be spent in pulling down and rebuilding houses, see *Re Montagu* [1897] 2 Ch. 8, and cases there cited.

A covenant to "rebuild" a building on the same site as the existing one does not, by the word "rebuild", involve the obligation to rebuild the new in the same manner, style, and shape, and with the same elevation, as the old building (*Low v Innes*, 11 L.T. 217); but, semble, it imposes an obligation completely to take down all the old buildings and build new ones (*London v Nash*, 3 Atk. 513, cited BUILDING LEASE). "Rebuild" means rebuild in whole or in a substantial part (*YMCA of Moncton v MacDonald* [1949] 1 D.L.R. 512).

A power to grant a lease "for the purpose of new building or effectually rebuilding and repairing" existing buildings, is not well executed if the lessee only covenants to "effectually repair" the buildings and to keep them repaired and upheld as need should require (*Doe d. Dymoke v Withers*, 2 B. & Ad. 896; but see on this case questioned by Jessel M.R., *Truscott v Diamond Rock-boring Co*, 20 Ch. D. 251, cited IMPROVE).

In exercising their discretion as to applying a legacy towards "rebuilding", e.g. a hospital, trustees would be probably justified in giving a liberal construction to that word (*Re Unite*, 75 L.J. Ch. 163, cited DIRECTION).

"Rebuilt": see *Yabbicome v Bristol Brewery*, 67 J.P. 261, cited TAKE DOWN.

A building which is different in design and size from the one it is meant to replace cannot be regarded as a "rebuilding" of the existing one for the purposes of the planning legislation (*Bragg v Hurstville Municipal Council*, 21 L.G.R.A.). See SUBSTANTIAL.

REBUTTER. "*Rebourter*" is a French word, and is in Latine *repellere*, to repell or barre" (Co. Litt. 365A).

A rebutter, in pleading, was the defendant's answer to the plaintiff's surrejoinder; a sur-rebutter was the plaintiff's answer to the rebutter (3 Bl. Com. 310).

RECALL. "Is recalled to duty" (Police Regulations 1987 (No.851) reg.28). A change in rostered starting time resulting in a change which straddled two "days" under reg.26(5) was held not to be a "recall" within the meaning of reg.28 (*R. v South Yorkshire Police, Ex p. Middup*, *The Times*, May 1, 1989).

(Mental Health Act 1983 Pt II (c.20) s.42.) The word "recall" should not be regarded in purely physical terms as meaning the bringing back of a person to where he once was but should be viewed as reinstating the restrictive regime of control under s.41 of the 1983 Act (*Dlodlo v Mental Health Review Tribunal for the South Thames Region* [1996] 8 C.L. 474).

RECALL PETITION. Stat. Def., Recall of MPs Act 2015 s.22. (*ITV Plc v Pensions Regulator* [2015] EWCA Civ 228.)

RECAPTION. "Is a second distress of one formerly distreyned for the selfe same cause" (Termes de la Ley). See further Jacob.

RECEIPT. "No particular form of words is necessary to constitute a receipt. The word 'settled', or 'paid', or any other word purporting to give a discharge, together

RECEIPT

with the signature of the creditor, or his mere signature on a document specifying the amount due without any other words indicating payment, is sufficient (*R. v Martin*, 7 C. & P. 549; *Spawforth v Alexander*, 2 Esp. 621; *R. v Boardman*, 2 Moo. & R. 147; *R. v Overton*, 23 L.J.M.C. 29)". Cp. RELEASE.

A turnpike ticket was a "receipt" (*R. v Finch*, L. & C. 159), and a bank pass book was an "accountable receipt" (*R. v Smith*, 31 L.J.M.C. 154; *R. v Moody*, 31 L.J.M.C. 156), within s.23 of the Forgery Act 1861 (c.98); but a "clearance" certificate from one branch of a friendly society to another, was not (*R. v French*, L.R. 1 C.C.R. 217), nor was a railway scrip certificate (*Clark v Newsam*, 1 Ex. 131; *R. v West*, 1 Den. 258).

"Receipt" of a garnished debt (to complete its attachment—s.45(2) of the Bankruptcy Act 1883 (c.52), see Bankruptcy Act 1914 (c.59) s.40(2)) means its actual receipt by the judgment creditor; a constructive receipt, e.g. its payment into court to abide a third-party claim afterwards withdrawn, will not suffice (*Butler v Wearing*, 17 Q.B.D. 182; see further *Re Trehearne*, 63 L.T. 323, affirmed 60 L.J.Q.B. 50); but observe, s.45 of the Bankruptcy Act 1883 (c.52) did not apply to a company liquidation (*Re National United Investment Corp* [1901] 1 Ch. 950).

There is no "receipt of the debt" until, as between the judgment creditor and the *garnishee*, there has been an unconditional payment to the judgment creditor or his duly authorised agents. Where such agents receive payment not solely as his agents, but as stakeholders or trustees holding the money as security to meet a possible claim against the *garnishee*, the attachment has not been completed (*Re Lupkovics, Ex p. The Trustee v Freville* [1954] 1 W.L.R. 1234).

Neither a simple receipt, nor an inventory of goods and receipt for their purchase money, was a "receipt" which, under s.4 of the Bills of Sale Act 1878 (c.31), required registration, unless such receipt, or inventory and receipt, made the title of the purchaser to the goods (*Marsden v Meadows*, 7 Q.B.D. 80; see also *Thompson v Barrett*, 1 L.T. 268; *Allsop v Day*, 31 L.J. Ex. 105; *Byerley v Prevost*, L.R. 6 C.P. 144; see those three cases commented on and distinguished in *Ex p. Odell, Re Walden*, 10 Ch. D. 76, and *Re Baum, Ex p. Cooper*, 10 Ch. D. 313; but the authority of *Marsden v Meadows* was established by the House of Lords in *Manchester, Sheffield & Lincolnshire Railway v North Central Waggon Co*, 13 App. Cas. 554. See further *Ex p. Blandford, Re Hood*, 37 S.J. 512, 602; ASSURANCE). See also *Clapham v Ives*, 91 L.T. 69; *Stammers v Margrett*, 21 L.T.R. 342.

Stamp Act 1891 (c.39) s.101: "'receipt' includes any note, memorandum, or writing, whereby any money amounting to £2 or upwards, or any bill of exchange or promissory note for money amounting to £2 or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand or any part of a debt or demand of the amount of £2 or upwards is acknowledged to have been settled, satisfied or discharged, or which signifies or imports any such acknowledgment; and whether the same is or is not signed with the name of any person". "Those are words of the most wide and comprehensive kind" (per Russell C.J., *Att-Gen v Carlton Bank*, 68 L.J.Q.B. 791), and included receipts given by the cashier of a bank to its solicitor, for moneys recovered or collected by the latter for the bank, even though such solicitor was, by the terms of his appointment, an officer of the bank who was entitled to his whole time and paid him an annual salary (*ibid.*, [1899] 2 Q.B. 158). So, though fees to counsel were in the nature of an honorarium yet an acknowledgment of their payment, e.g. by counsel writing his name across the fee marked on the back of his brief, was a "receipt" within the Stamp Act (*General*

Council of the Bar v Inland Revenue Commissioners [1907] 1 K.B. 462, criticising *Day v Glaister*, below); but semble, a “receipt” even within the wide definition of the Stamp Act, meant a document given by the payee to the payer to be retained by the latter as his voucher, and did not include a memorandum of payment made on a document which was the common property of both, e.g. on a specification belonging to two joint undertakers of a payment by one to the other in respect of the undertaking (*Day v Glaister*, 37 S.L.R. 737); see hereon *Cameron v Henderson*, 28 S.L.R. 490. In the Schedule to the Act several exemptions from the stamp duty were provided, the first and chief of which was a “receipt given for money deposited in any bank or with any banker to be accounted for and expressed to be received of the person to whom the same is to be accounted for”; as to Exemption 11, see *London & Westminster Bank v Inland Revenue Commissioners* [1900] 1 Q.B. 166. See further *Firth v Inland Revenue Commissioners* [1904] 2 K.B. 207, cited DISCHARGE. The stamp duty on receipts was abolished by the Finance Act 1970 (c.24).

“Receipt” (ss.54, 55 and 56 of the Conveyancing and Law of Property Act 1881 (c.41)): see *Renner v Tolley*, 68 L.T. 815. See now Law of Property Act 1925 (c.20) ss.67, 68, 69.

“Receipt for the last payment due for rent” (s.45 of the Law of Property Act 1925 (c.20)): see PAYMENT. The production of such receipt does not displace the obligations of the vendor of leaseholds on respect of the non-performance of the lessee covenants, as laid down by *Barnett v Wheeler* (10 L.J. Ex. 102); the section simply makes the receipt prima facie evidence that the covenants have been performed, and “leaves the law where it was, except so far as it modified the incidence of the burden of proof”: per Collins M.R., *Re Highett and Bird* [1903] 1 Ch. 287; *Re Taunton Society* [1912] 2 Ch. 381.

“Receipt”: see *Midland Bank Ltd v Inland Revenue Commissioners* [1927] 2 K.B. 465, money payable by a bank on presentation of a “receipt”.

“In receipt of the rack rent”: see *Kensington BC v Allen*, 42 T.L.R. 499.

Quaere whether an entry on a card attached to a payment coin meter by a collector is a receipt: see *Att-Gen v Northwood Electric Light & Power Co* [1947] K.B. 511.

“Receipt and acceptance” of goods: see ACCEPTANCE; see further *Marshall v Green*, 1 C.P.D. 35.

“Receipts of the rents and profits” (Representation of the People Act 1832 (c.45) s.26): see *White v Brown* [1913] 1 K.B. 78.

“Receipt for rent”: see RENT.

“Statutory receipt by a building society”: see STATUTORY.

See AUTHORITY OR REQUEST; IN RECEIPT; RECEIPTS; STATUTORY; VACATE. See further DEPOSIT; ON RECEIPT; RELEASE.

RECEIPT OF PROCEEDS. A non negotiable promissory note was a conditional promise of future payment and not “receipt of proceeds” from a share sale agreement (*Petroleum Investment Co Ltd v Kantupan Holdings Co Ltd* [2002] 1 All E.R. (Comm) 124).

RECEIVABLE. “I myself should have held that the words ‘receivable’ and ‘payable’ were the same thing, and that both were equivalent to ‘vested’; but I am happy to find that the judgment of the M.R. in *Hayward v James* (29 L.J. Ch. 822), expresses exactly the same conclusion” (per Malins V.C., *West v Miller*, L.R. 6 Eq. 59). See further *Watson Eq.* (2nd ed.), 1228.

RECEIVE

"Receivable" may be construed "received" (Wms. Exs. (12th ed.), 689, citing *Re Dodgson*, 1 Drew. 440). In that case there was a gift over if any member of a class died "before receiving" his share; held, that that phrase meant "before being entitled to receive".

Under s.5 of the Income Tax Act 1918 (c.40); see *Inland Revenue Commissioners v Pakenham*, 96 L.J.K.B. 882, affirmed [1928] A.C. 252; *Leigh v Inland Revenue Commissioners*, 43 T.L.R. 528.

See RECEIVED; PAYABLE.

RECEIVE. See RECEIPT; RECEIVABLE; RECEIVING; PAYABLE.

The words "receives payment", in s.82 of the Bills of Exchange Act 1882 (c.61), are not limited so as to apply only to a bank which receives payment as a receiving bank, they apply also to a bank which receives payment as a collecting bank: see *Importers Co Ltd v Westminster Bank Ltd* [1927] 2 K.B. 297.

"Receive payment for a customer": see *Lloyds Bank Ltd v Chartered Bank of India*, 44 T.L.R. 534.

"Dishonestly receives the goods" (Theft Act 1968 (c.60) s.22(1)). "Receives" indicates a single finite act and not a continuing activity (*R. v Smythe* (1980) 72 Cr.App.R. 8).

"Persons receiving or entitled to the income" (Income and Corporation Taxes Act 1970 (c.10) s.114(1)). Where no beneficiary had an absolute vested interest in the income of a trust the trustees were the persons "receiving or entitled to the income" for the purposes of this section (*Dawson v IRC* [1989] 2 W.L.R. 858).

"The return... is received by the Commissioners" (Finance Act 1985 (c.54) s.20(1)(b)). A claim that a return was "received" when posted, on the basis that the Post Office was acting as agents for the Commissioners, failed (*Customs and Excise Commissioners v W Timms & Son (Builders)* [1992] S.T.C. 374).

"The time the... payment is received": see PAYMENT.

See RIGHT TO RECEIVE.

See ENTITLED.

"Ready to receive cargo": see READY TO LOAD.

"Purchase, take, hold, receive, or enjoy" land in mortmain: see PURCHASE.

"Send out, deliver, remove, or receive" spirits: see SEND.

RECEIVED. Sums "received" in the United Kingdom in respect of securities elsewhere and chargeable with income tax under s.100 Sch.D Case 4 of the Income Tax Act 1842 (c.35) did not include sums only constructively received in Great Britain, in yearly accounts of profits and loss (*Gresham Life Assurance v Bishop* [1902] A.C. 287, weakening effect of, if not over-ruling, *Universal Life Assurance v Bishop*, 68 L.J.Q.B. 962; following *Scottish Mortgage Co of New Mexico v McKelvie*, 24 S.L.R. 87, and *Norwich Union Fire Insurance v Magee*, 44 W.R. 384). See further *Forbes v Scottish Provident Institution*, 33 S.L.R. 228. Sums actually received in the United Kingdom in respect of a business abroad were, prima facie, profits chargeable with income tax (*Scottish Provident Institution v Allan* [1903] A.C. 129; *The Same v Farmer*, 6 Tax Cas. 34).

"When received": see WHEN.

"Received in": see CAUSED BY.

See ACTUALLY RECEIVED; MONEY RECEIVED; SERVED.

RECEIVER. Generally speaking, a receiver "is an indifferent person between the parties appointed by the court to receive the rents and profits of real estate, or to act in

and collect personal estate or other things in question, pending the suit, where it does not seem reasonable to the court that either party should do so; or where a party is incompetent to do so, as in the case of an infant" (Dan. Ch. Pr. (7th edn), 1409).

"A receiver means a person who receives rents or other income, paying ascertained outgoings; but he does not manage the property in the sense of buying and selling or anything of that kind . . . The receiver merely takes the income and pays necessary outgoings; the manager carries on the trade or business" (per Jessel M.R., *Re Manchester & Milford Railway*, 14 Ch. D. 652, 653).

A mortgagee who has appointed a receiver under the statutory power has a right of action, based on breach of statutory duty, against the receiver if he fails to account to the mortgagee for rents and profits received by him (*Leicester Permanent Building Society v Bull* [1943] Ch. 308). But the duty imposed on receivers by s.109(8) of the Law of Property Act 1925 (c.20), to apply money received by them in payment of (among other things) rates is not a "statutory duty" for whose breach the receiver will be liable to the local authority to whom rates are payable (*Liverpool Corp v Hope* [1938] 1 K.B. 751).

A receiver cannot, without leave of the court, purchase the property of which he is receiver: see *Boddington v Langford*, 15 I. Ch. R. 558; *Nugent v Nugent* [1908] 1 Ch. 546.

Stat. Def., Finance Act 1894 (c.30) s.23. See OFFICIAL (Law of Property Act 1925 (c.20) s.101).

For the appointment of receivers see Insolvency Act 1986 (c.45) s.287 and Supreme Court Act 1981 (c.54) s.37.

"Known agent or receiver": see KNOWN AGENT.

Receiver as "occupier" of a factory: see OCCUPIER.

As to the law of receivership and the position of receiverships after the enactment of Civil Procedure Rules r.69.7, see *Capewell v Revenue and Customs Commissioners* [2007] UKHL 2.

RECEIVING APPARATUS. Stat. Def., in the context of broadcasting, Wireless Telegraphy Act 2006 s.115(1).

See TELEVISION.

RECEPTACLE. A locked motor car was not a locked receptacle for the keeping of drugs within Dangerous Drugs Regulations 1937 (No.560) r.5(2) (*Kameswara Rao v Wyles* [1949] 2 All E.R. 685).

RECEPTION. "Institute for the reception of persons" (National Health Service Act 1946 (c.81) s.79): "reception" means taking people into a building and keeping them there as is normally done at a hospital. It is not satisfied merely by something like treatment at a dispensary or clinic or out-patients' department (*Re Couchman* [1952] Ch. 391).

"Reception order": see ORDER.

RECITAL OF FACT. See FACT.

RECITATION. "Recitation" (Finance Act 1946 (c.64) s.8(1)) did not include something of the nature of the monologue or patter of a comedian (*Eastbourne Corp v Customs and Excise Commissioners* [1954] 1 W.L.R. 109).

RECKLESS. There are two types of recklessness in English law. There is the subjective test which is to be applied to cases under ss.18 or 20 of the Offences against the Person Act 1861 (c.100), and for which the definition of Mr Justice Byrne in *R. v Cunningham* [1957] 2 Q.B. 396 is the authority, by which the accused himself must be

shown to have foreseen that the particular kind of harm might be done, and has nevertheless been reckless enough to have gone ahead and taken the risk. Then there is the objective test which is to be applied to cases under s.1 of the Criminal Damage Act 1971 (c.48), and for which the definition of Lord Diplock in *R. v Caldwell* [1982] A.C. 341 is the authority, where the accused himself has not given any thought to the possibility of there being any risk, but has done an act which an ordinary prudent person could foresee might endanger property (*R. v Morrison* (1989) 89 Cr.App.R. 17). On a charge of attempted arson in the aggravated form contemplated by s.1(2) of 1971 Act, in addition to establishing a specific intent to cause damage by fire, it was held to be sufficient to prove that the defendant was reckless as to whether life would thereby be endangered (*Att-Gen's Reference (No.3 of 1992)*, *The Times*, November 18, 1993). A defendant who failed to give thought to the possibility that his actions might give rise to a risk of causing another person actual bodily harm was not guilty of an offence under s.47 of the 1861 Act. The test of recklessness under this section was that laid down in *R. v Cunningham* (above) that the accused had foreseen that the particular kind of harm might be done and yet had gone on to take the risk of it (*R. v Spratt* [1990] 1 W.L.R. 1073; *Berrelly v DPP* [1991] C.O.D. 184). On a charge under s.20 of the 1861 Act the accused must be shown to have intended to cause the particular kind of harm specified or to have been reckless as to whether he did so (*R. v Parmenter* (1991) 92 Cr.App.R. 68). See also ASSAULT.

It is open to a trial judge to use the word "reckless" in its ordinary meaning as part of an exposition of gross negligence in cases of manslaughter by criminal negligence (*R. v Adomako* [1994] 3 W.L.R. 288).

"Reckless as to whether any property would be... damaged"; "reckless as to whether the life of another would be thereby endangered" (Criminal Damage Act 1971 (c.48) s.1(2)(a)(b)). In considering whether a certain act is "reckless" within the meaning of this section the question to be asked is whether an ordinary prudent bystander would have perceived an obvious risk that property of value or life would thereby be endangered (*R. v Sangha* [1988] 1 W.L.R. 519).

The word "recklessness" in art.3(2) of the Sea Fishing (Enforcement of Community Control Measures) Order 1985 (SI 1985/487) should be given its ordinary English meaning, as it was in the context of the tort of fraud (*Ministry of Agriculture Fisheries and Food v Mainprize* [1989] Crim. L.R. 213).

"Recklessly to make a statement which is false" (Trade Descriptions Act 1968 (c.29) s.14(1)(b)). A statement concerning past services could fall within the ambit of this section if it was made in connection with the transaction in question, as, for example, a device to persuade the customer to enter into the transaction (*R. v Bevelectric* (1992) 142 New L.J. 1342).

(Data Protection Act 1984 (c.35) s.5.) "Recklessness" required consideration of the defendant's foresight of the consequences set out in the Data Protection Act 1984 s.5 (*Data Protection Registrar v Amnesty International (British Section)*, *The Times*, November 23, 1994).

A vendor cannot rely on a contractual right to rescind if he entered into the contract "recklessly"—i.e. with an unacceptable indifference to the situation of the purchaser (*Selkirk v Romar Investments* [1963] 1 W.L.R. 1415).

"Reckless disregard for safety", in respect of the liability of an occupier to a trespasser, means doing or omitting to do something which one recognises is likely to cause serious injury but does not care whether it does or not. Recklessness, so far as

the law of torts is concerned, is akin to intentional wrongdoing and is something essentially different in kind from negligence or carelessness (*Herrington v British Railways Board* [1971] 2 Q.B. 107).

A deception, in order to be "reckless" within the meaning of the Theft Act 1968 (c.60) s.15(4), must be more than merely careless or negligent; there must be an indifference as to whether a statement is true or false (*R. v Staines (Linda Irene)* (1974) 60 Cr.App.R. 160).

"Recklessly" (Trade Descriptions Act 1968 (c.29) s.14). A statement made without regard for its truth or falsity is made "recklessly" whether or not there is any dishonest intention (*MFI Warehouses v Natrass* [1973] 1 W.L.R. 307). But a company which had attempted to correct the falsity of a brochure which contained a misleading photograph was held not to have been reckless within the meaning of this section (*Wings v Ellis* [1984] All E.R. 1046).

"Reckless as to whether she consents" (Sexual Offences (Amendment) Act 1976 (c.82) s.1(1)(b)). "Reckless" means, in the context of rape or attempted rape, that the accused was either indifferent and gave no thought to whether the woman was consenting to sexual intercourse or not, or that he was aware of the possibility that she might not be consenting to sexual intercourse but nevertheless persisted, whether she consented or not (*R. v Pigg* [1982] 1 W.L.R. 762).

"Recklessly and with knowledge that damage would probably result" (Carriage by Air Act 1961 (c.27) Sch.1 art.25). "Recklessly" is not to be construed in isolation but in context, and the test of whether a pilot who failed to order the fastening of seat belts on meeting turbulence was reckless within the meaning of this article is a subjective one. In this case it was held to be unlikely that the pilot, although aware of the imminence of turbulence, knew that it would probably be so severe as to cause the kind of injury suffered by the plaintiff (*Goodman v Thai Airways* [1983] 1 W.L.R. 1186).

In a case where there was a charge of malicious wounding contrary to s.20 of the Offences Against the Person Act 1891 (c.100) a gamekeeper's appeal against conviction was allowed on the grounds that, when he fired his gun to startle a suspected poacher, there appeared to him to be no risk of injury, and he was, therefore, not "reckless" (*Flack v Hunt* (1979) 70 Cr.App.R. 51).

A man is "reckless" for the purposes of the Criminal Damage Act 1971 (c.48) s.1 when he carries out a deliberate act knowing, or closing his mind to the obvious fact, that there is some risk of damage resulting from it (*R. v Parker* [1977] 1 W.L.R. 600). Recklessness was held to be a subjective concept involving appreciation of risk of damage or injury, and the ability to foresee the possible consequences of the act in question (*R. v Stephenson* [1979] Q.B. 695; *R. v Mullins* [1980] Crim. L.R. 37; *R. v Orpin* [1980] 2 All E.R. 321). Thus, schizophrenia (*Stephenson*) and drunkenness (*Orpin*) have been held to negate recklessness. But in *R. v Caldwell* [1981] 1 All E.R. 961 the House of Lords held that where a charge was, or included a reference to being reckless whether the life of another would be endangered, evidence of self-induced intoxication was irrelevant. A person charged with an offence under this section is "reckless as to whether any such property would be destroyed or damaged if (1) he does any act which in fact creates an obvious risk that property will be destroyed or damaged, and (2) when he does the act, he either has not given any thought to the possibility of there being any such risk or has recognised that there was some risk involved and has nonetheless gone on to do it" (per Lord Diplock in *R. v Caldwell*,

RECKLESS

above). This objective test was followed in *Elliott v C. (a Minor)* [1983] 2 All E.R. 1005, where it was held that for the act to be “reckless” the risk was one which would have been obvious to a reasonably prudent person. It is “reckless” if, after starting a fire accidentally, no steps are taken to contain it or put it out (*R. v Miller* [1983] 2 W.L.R. 539).

In s.1 of the Criminal Damage Act 1971 (c.48): *R. v G* [2003] 3 W.L.R.1060, HL.

RECKLESS DRIVING. “Drives . . . recklessly” (Road Traffic Act 1972 (c.20) s.2 as substituted by Criminal Law Act 1977 (c.45) s.50(1), now Road Traffic Act 1988 (c.52) s.2). Reckless driving is not confined to the actual way a vehicle is driven, and a person who drove a lorry with an insecure load, which he knew might fall off and injure someone, and deliberately ran the risk, was guilty of reckless driving (*R. v Crossman* [1986] R.T.R. 49). A person driving with excess alcohol does not automatically drive recklessly (*Hand v DPP* [1991] R.T.R. 225). When directing a jury on reckless driving the judge should use Lord Diplock’s definition of recklessness in *R. v Lawrence* [1982] A.C. 510 [see Main Work, 2185] (*R. v Lamb (Charles)* (1990) 91 Cr.App.R. 181; *R. v Reid* [1991] Crim. L.R. 269; *R. v Fisher (Paul)* [1993] R.T.R. 140). Recklessness in the context of reckless driving includes an objective test that is “heedlessness of the presence of a risk as well as disregard of a recognised risk” (*R. v Reid* [1992] 1 W.L.R. 793). The fact that the accused had been drinking before driving was not relevant to the first part of the test of recklessness as laid down by Lord Diplock in *Lawrence* (above), namely whether the accused “was in fact driving the vehicle in such a manner as to create an obvious and serious risk of causing physical injury”. Simply to drink in excess and then drive was not sufficient and a direction which suggested to the jury that it might be was defective (*R. v Welburn* [1992] Crim. L.R. 203).

“Causes death . . . by driving . . . recklessly” (Road Traffic Act 1972 (c.20) s.1 as substituted by Criminal Law Act 1977 (c.45) s.50(1), now Road Traffic Act 1988 (c.52) s.1). On the trial of an offence of causing death by reckless driving the jury, in their deliberations, may consider to what extent, to the knowledge of the defendant, the consumption of alcohol affected the manner of his driving (*R. v Clarke* (1990) 91 Cr.App.R. 69). On a charge of causing death by reckless driving the prosecution must show that the manner of driving created an obvious and serious risk. It was not enough to show only that the motorist had drunk to excess and then driven (*R. v Bennett* [1992] R.T.R. 397). Where, on a charge of causing death by reckless driving, the defendant was, at the time, in a state described as driving without awareness induced by motorway driving over a long period, that did not amount to automatism since there was no destruction, nor total absence of, voluntary control on the part of the defendant in his driving (*Att-Gen’s Reference (No.2 of 1992)* [1993] 3 W.L.R. 982). On a charge of causing death by reckless driving proof was required that the motorist was driving in such a manner as to create an obvious and serious risk of causing physical injury or substantially damaging property and driving with excess alcohol was not of itself sufficient (*R. v Peters (Anthony Raymond)* [1993] R.T.R. 133).

RECKONABLE EARNINGS. (National Insurance Act 1965 (c.51) s.2(5)(b).) Only emoluments from which income tax under Sch.E. is deductible were “reckonable” under this section (*Baker v Minister of Social Security* [1969] 1 W.L.R. 644).

RECLAIM FUND. Stat. Def., Dormant Bank and Building Society Accounts Act 2008 s.5.

RECLUSE. “‘*Recluse*’, *reclusus*, *heremita*, *seu anchorita*, so called by the order of his religion; he is so mured or shut up, *quod solus semper sit, et in clausurâ suâ sedet*; and can never come out of his place” (Co. Litt. 258B; see s.434, Litt., for use of “recluse”; see further *Termes de la Ley*).

RECOGNISANCE. “A recognisance is the acknowledgment of a debt due to the King, defeasible upon the happening of a certain event, namely the appearance of the party in court pursuant to the terms of the condition. In this respect, a recognisance resembles a bond in its nature” (per Wightman, arg. *R. v Dover*, 1 Cr. M. & R. 733); that is an accurate statement of “the precise nature of recognisances” (per Ridley J., *Re Nottingham Corp* [1897] 2 Q.B. 502, cited AMERCIAMENT). See hereon 4 Cru. Dig. 95; Jacob.

See BAIL; BIND OVER; SURETY; SURETY OF THE PEACE.

RECOGNISE. “Act . . . which recognises a pre-existing contract of sale” (s.4(3) of the Sale of Goods Act 1893 (c.71)); see *Abbott v Wolsey* [1895] 2 Q.B. 97; ACCEPTANCE.

RECOGNISED. A vessel registered as a British ship at the time of action brought, but not so registered when the collision occurred, is not a “recognised British ship”, as regards the action, within s.19 of the Merchant Shipping Act 1854 (c.104)—see s.2(2) of the Merchant Shipping Act 1894 (c.60) (*The Andalusian*, 3 P.D. 182). A British fishing boat registered only under Pt IV of the Merchant Shipping Act 1894 (c.60), and not under Pt I, is sufficiently registered to be “recognised as a British ship” within s.2 (*Couper v M’Kenzie*, 43 S.L.R. 416; see also *The Harlow*, 91 L.J.P. 119).

Employers having in accordance with the wish expressed by the Ministry of Labour observed the Saturday before Whit-Monday 1943, as a holiday and closed their works, it was held that that day was not a holiday “recognised as such” within the Essential Work (Building and Civil Engineering) Order 1942 (No.2044) art.1 (*Cummins v Holloway Brothers (London)* [1944] K.B. 323).

“Recognised as being legitimate” (Legitimacy Act 1926 (c.60) s.8(1)): see *Re Hurll* [1925] 2 T.L.R. 85.

“Recognised” (Employment Protection Act 1975 (c.71) s.99). Before an employer is held to have “recognised” a trade union for the purposes of collective bargaining, clear and unequivocal evidence of an agreement, and/or conduct from which recognition must be inferred, is required. To discuss with a union the conditions of employment of eight union members out of a staff total of 55 did not constitute recognition for the purposes of this Act (*National Union of Gold, Silver and Allied Trades v Albury Brothers* [1979] I.C.R. 84). But a company which was a member of an employers’ association which had a national agreement with a union, and which employed 64 persons of whom 22 were union members, but which had never had any negotiations with the union, was held to have “recognised” the union within the meaning of this section, on the basis of the national agreement, and because they had named the union on a Department of Employment form relating to the dismissals (*National Union of Tailors and Garment Workers v Charles Ingram & Co* [1978] 1 All E.R. 1271). Similarly employers who had allowed the union representative to put up a notice publicising a wage increase and to collect union dues on the employers’ premises, and had consulted him on matters of security, discipline and changes in the duties of employees, were held to have “recognised” the union (*Joshua Wilson & Brothers v Union of Shop Distributive and Allied Workers* [1978] 3 All E.R. 4).

RECOGNISED

In relation to a trade union: Stat. Def., Dock Work Regulation Act 1976 (c.79) s.15; Employment Protection (Consolidation) Act 1978 (c.44) s.32.

RECOGNISED STOCK EXCHANGE. Stat. Def., Finance Act 2007 s.109 and Sch.26; Corporation Tax Act 2010 s.1137.

RECOGNITION AND ENFORCEMENT. These words in art.10(1) of the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children are to be construed disjunctively (*Re H. (a Child) (Foreign Order)*, *The Times*, November 19, 1993).

RECOGNITION DISPUTE. Stat. Def., Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) s.210A inserted by Employment Relations Act 2004 (c.24) s.21.

RECOMMEND. "Recommend as a medicine" (Pharmacy and Medicines Act 1941 (c.42) s.17(1)): see *Nairne v Stephen Smith & Co* [1943] K.B. 17 (Hall's wine described as suitable for a run-down condition held to be a substance recommended as a medicine).

"Held out or recommended": see HOLD OUT.

See PRECATORY TRUST.

RECOMMENDATION. Under cl.19 of the scheme made under the Endowed Schools Act 1869 (c.56): see *R. v Christ's Hospital Governors* [1917] 1 K.B. 19.

"Recommendation" in a will implies a freedom to follow or not to follow, to accept or to reject the recommendations according to one's own discretion (*Bertram v Clemons* [1955] L.M.D. 941).

RECONCILIATION. A reconciliation of a church, is an exception to the rule that a church once consecrated cannot be re-consecrated, for there is a reconciliation after a church has been polluted by the shedding of blood, e.g. on October 13, 1890, at St. Paul's Cathedral, after a suicide there (Phil. Ecc. Law (2nd edn), 1399; see further 1400, as to re-consecration).

"Reconciliation" of spouses who have been separated means a bilateral intention to set up a matrimonial home together (*Cook v Cook* [1949] L.J.R. 581).

RECONDITION. A stipulation in a contract for the sale of tractors that they should be "re-conditioned" was held to require more than just overhauling or repairing. It required a thorough examination and the replacement of such parts as would be necessary to give the machines a new lease of life (*Minster Trust v Traps Tractors* [1954] 1 W.L.R. 963).

RECONSTRUCTION. The erection of a new building as part of the phased redevelopment of a site was not capable of constituting the "reconstruction . . . of any existing building" within the meaning of Sch.5 Group 8 to the Value Added Tax Act 1983 (c.55), as amended by s.10 and Sch.6 para.5 to the Finance Act 1984 (c.43) (*Wimpey Group Services v Commissioners of Customs and Excise* [1988] S.T.C. 625).

"Substantial work of reconstruction" (Landlord and Tenant Act 1954 (c.56) s.30(1)(f)). Non-structural internal works to update an old building did not amount to substantial "reconstruction" within the meaning of this section (*Barth v Pritchard* [1990] 20 E.G. 65). For works to qualify as "reconstruction" within the meaning of this section it must be shown that they are works of rebuilding (including preparatory or ancillary works) involving a substantial interference with the structure of the building, but not necessarily confined to the outside or load bearing walls (*Romulus Trading Co v Henry Smith's Charity Trustees* [1990] E.G. 41).

“Reconstruction” (Finance Act 1927 (c.10) s.55). A partition of assets does not constitute a “reconstruction” for the purposes of this section (*Swithland Investments v IRC* [1990] S.T.C. 448).

In the context of s.86 of the Capital Gains Tax Act 1979 there is no reconstruction where a business is partitioned between two groups of shareholders each of which holds a separate part of the restructured business (*Fallon (Morgan’s Executors) v Fellows (Inspector of Taxes)* [2001] S.T.C. 1409, Ch).

The essence of the reconstruction of a company is that the shareholders in the new company are the same or substantially the same as in the old (*Re Mutravel Group Plc* [2004] EWHC 2741, Ch).

Stat. Def., Highways Act 1959 (c.25) s.295.

See SUBSTANTIAL.

RECONVEYANCE. A reconveyance is the document which a mortgagor takes from his mortgagee when he pays off a mortgage. See RENUNCIATION.

As to the construction of the proviso for reconveyancing in a mortgage, see *Re Oxenden*, 74 L.J. Ch. 234.

As to a mortgagee’s duty to have reconveyance ready to hand over at the time for payment, see *Rourke v Robinson* [1911] 1 Ch. 480; see also *Holme v Fieldsend*, 55 S.J. 552.

“Reconveyance” in respect of stamp duty: see *Firth v Inland Revenue Commissioners* [1904] 2 K.B. 207, cited DISCHARGE.

RECORD. The record of an action is a memorial of the pleadings and acts in an action brought in a court of record (Co. Litt. 260A, 117B; see further Cowel; Jacob), and was formerly written on parchment (Co. Litt. 260A); but see now R.S.C. Ord.36 r.30.

The issue accompanying a judge’s order remitting an action to the county court under County Court Act 1856 (c.108) s.26, was a sufficient “record” within s.5 of the County Courts Act 1867 (c.142) (*Taylor v Cass*, L.R. 4. C.P. 614).

No appeal in a criminal cause save for error “apparent upon the record” (s.47 of the Judicature Act 1873 (c.66)): see *Payne v Wright* [1892] 1 Q.B. 104.

Certiorari is available to quash a decision on the ground that there is an error of law on the face of “the record”. “The record must contain at least the document which initiates the proceedings, the pleadings, if any, and the adjudication, but not the evidence, nor the reasons, unless the tribunal chooses to incorporate them” (per Denning L.J. in *R. v Northumberland Compensation Appeal Tribunal, Ex p. Shaw* [1952] 1 K.B. 338). See also *Baldwin and Francis v Patents Appeal Tribunal* [1959] A.C. 663. Applications for patents and specifications on which the Patents Appeal Tribunal base their decisions form part of the “record” of the tribunal for these purposes (*R. v Patents Appeal Tribunal Ex p. Swift* [1962] 2 Q.B. 647). For the purposes of granting certiorari for error on the face of the record, the “record” was not restricted to the formal order but extended to the reasons given by the judge in his oral judgment and set out in the official transcript (*R. v Crown Court at Knightsbridge, Ex p. International Sporting Club (London)* [1981] 3 All E.R. 417).

“Record” (s.28 of the Forgery Act 1861 (c.98)) meant a record of a court of competent jurisdiction, and did not include the forgery of a certificate of letters of ordination (*R. v Etheridge*, 19 Cox C.C. 676).

“Matter of record”: see *Sadler’s Case*, 4 Rep. 54 b.

Assurances by matter of record are (a) Act of Parliament, or (b) grant from the Crown; to these formerly were added, (c) FINE, and (d) COMMON RECOVERY; see *Sadler's Case*, above; 2 Bl. Com. Chap. 21.

"Continuous record" (Evidence Act 1938 (c.38) s.1(1)(i)(b)) did not necessarily include the documents in a file which were of a similar nature and dealt with the same or a kindred subject-matter (*Thrasyvoulos Ioannou v Papa Christoforos Demetriou* [1952] A.C. 84).

"Record relating to any trade or business" (Criminal Evidence Act 1965 (c.20) s.1(1)); see *R. v Gwilliam* [1968] 1 W.L.R. 1839. It would seem that a file of correspondence is not a "record" within the meaning of this section (*R. v Tirado* (1974) 59 Cr.App.R. 80). A bill of lading and a cargo manifest, both made out in Hong Kong, constituted a "record relating to any trade or business" for the purposes of this section (*R. v Jones (Benjamin)* [1978] 1 W.L.R. 195). See also BUSINESS.

"Record" (Civil Evidence Act 1968 (c.64) s.4). Documents consisting of the results of research, letters and articles published in medical journals were held not to be "records" within the meaning of this section (*H. v Schering Chemicals* [1983] 1 W.L.R. 143). An inspector's report is not an original or primary source of information and is not admissible in ordinary civil proceedings as a "record" under this section (*Savings and Investment Bank v Gasco Investments (Netherlands) BV* [1984] 1 W.L.R. 271).

"Recorded or stored" (Forgery and Counterfeiting Act 1981 (c.45) s.8(1)(d)). Passwords or control numbers used to gain unauthorised access to a computer system had not been "recorded or stored" within the meaning of this section (*R. v Gold*; *R. v Schifreen* [1988] 2 W.L.R. 984). See also DEVICE.

"Record compiled by a person acting under a duty" (Police and Criminal Evidence Act 1984 (c.60) s.68). Neither the depositions of two witnesses in Ireland (who were too scared to attend), nor the statement of a witness made to a police officer in the United States, could be a "record" for the purposes of this section (*R. v O'Loughlin* [1988] 3 All E.R. 431). Attendance notes of interviews with and statements of witnesses in Swaziland made by a defendant's solicitor, and coming into existence only because he was preparing the defendant's case for trial, did not fall within the restricted meaning of "record" in s.68, and were, therefore, not admissible in evidence in the proceedings (*R. v Cunningham* [1989] Crim. L.R. 435). Confession statements made by persons other than the accused can form part of a "record" within the meaning of this section (*R. v Iqbal* [1990] 1 W.L.R. 756). Application forms for accounts at a bank, completed by a person who might have been a defendant but for the fact that she could not be found, were capable of forming part of a record compiled by bank officials and were therefore part of a "record" within the meaning of this section (*R. v Bow Street Stipendiary Magistrate, Ex p. DPP* (1990) 91 Cr.App.R. 283).

(Copyright, Designs and Patents Act 1988 (c.48) s.182.) "Recording" in s.182 covered a recording and a record of the recording (*Bassey v Icon Entertainment Plc*) [1995] E.M.L.R. 596).

Stat. Def., Public Record Office Act 1838 (c.94) s.20; Local Government (Records) Act 1962 (c.56) s.8(1); Copyright Act 1956 (c.74) s.48; Theatres Act 1968 (c.54) s.7(3).

Stat. Def., "includes a photographic or electronic record" (s.103(3) of the Terrorism Act 2000 (c.11)).

See COURT OF RECORD; DEBT UPON RECORD.

RECORDING. Stat. Def., Copyright, Designs and Patents Act 1988 (c.48) s.180.

RECORDS. Stat. Def., Consumer Protection Act 1987 (c.43) s.45; “in relation to a council, means any documents which—(a) belong to the council or of which they have custody; and (b) have been retained for reference and research purposes or because of their likely historical interest” (Local Government (Wales) Act 1994 (c.19) s.60(7)); “includes registers, maps, plans and accounts, as well as computer records and other records kept otherwise than in documentary form” (Coal Industry Act 1994 (c.21) s.57(8)); Civil Evidence Act 1995 (c.38) s.9(4).

Stat. Def., “includes—(a) written records, and (b) records conveying information by any other means” (Government of Wales Act 2006 s.148(6)).

See ACCOUNTING RECORDS.

RECOURSE. “18. As it seems to me, Burton J was there espousing the view expressed by VDB that there was an important distinction between ‘ordinary recourse’ and ‘extraordinary recourse’; and recognising that although the possibility of the latter does not prevent an award being binding under the Convention (and also s.103(2)(f) of the 1996 Act) that is not so (or at least not necessarily so) with regard to the former. Of particular importance, in my view, is the conclusion reached by Burton J in [26] when he states: ‘As I conclude, the binding effect of an award depends upon whether it is or remains subject to ordinary recourse. Once it is binding, it does not cease to be so as a result of some event in the home jurisdiction; and the absence of such impediment does not make it so.’ As I read the Judgment in *Dowans*, the proceedings before the Tanzanian Court to set aside or to remit the ICC award were, in effect, treated by Burton J as “extraordinary recourse” and it was for that reason that he concluded that such proceedings were irrelevant for the purposes of enforcement as a matter of English law under s.103 of the 1996 Act. In my view, the result is that if an award is subject to ‘ordinary recourse’, it will not be binding.

19. I fully recognise that there may be a problem of definition i.e. what constitutes ‘ordinary recourse’ as opposed to ‘extraordinary recourse’; that there may well be a fine line between the two categories; that the recognition of such a distinction carries with it the potential danger of reintroducing the abandoned ‘double exequatur’ (or at least a modified form of it) by the back door which should be avoided; and that it remains necessary to consider the proper approach as to how the English court should determine whether or not the award is subject to ‘ordinary recourse’. But it seems to me that these problems are inherent in the wording of Article V of the Convention and s.103(2)(f) of the 1996 Act. . .

21. Whilst recognising the distinction between ‘ordinary recourse’ and ‘extraordinary recourse’, I am extremely reluctant to provide any definition of either category; and in my view it would be inappropriate to do so particularly because (i) as appears above, those responsible for drafting the Convention appear to have shied away from such exercise; (ii) the parliamentary draughtsman did not provide any definition of ‘binding’ in the 1996 Act; (iii) it seems unnecessary to do so in the circumstances of the present case; and (iv) even if Mr Cox is right that the term ‘ordinary course’ would embrace a ‘genuine appeal on the merits’, I am not persuaded that the concept of such term should necessarily be defined in such way.” (*Diag Human Se v Czech Republic* [2014] EWHC 1639 (Comm).)

RECOVER. The word “recover” has a technical meaning in law whereby it signifies, to recover by action and by the judgment of the court (see now *Wigens v Cook*, 28 L.J.C.P. 312; *Cream v Ray*, 30 L.J. Ex. 110; *Cooper v Pegg*, 24 L.J.C.P. 167;

Smith v Edge, 33 L.J. Ex. 9; *Fergusson v Davison*, 8 Q.B.D. 470); but it is said that there are cases which may be found in which the word has been held to be used in the larger and more popular sense of recover by any legal means, which would include, e.g. a distress (per Willes J., *Haines v Welch*, L.R. 4 C.P. 91). In that case it was held that the word in s.1 of the Landlord and Tenant Act 1851 (c.25), included the right to distrain.

But the amount of a verdict is not “recovered” till judgment can be signed upon it (per Brett J., *Ings v London & South Western Railway*, L.R. 4 C.P. 17). A plaintiff does not “recover” a sum paid in under a successful plea of tender (*James v Vane*, 29 L.J.Q.B. 169, overruling *Cooch v Maltby*, 23 L.J.Q.B. 301); and, where there is a successful set-off, he only “recovers” the balance due to him after its allowance (*Ashcroft v Faulkes*, 25 L.J.C.P. 202; *Beard v Perry*, 31 L.J.Q.B. 180, approved *Stooke v Taylor*, 5 Q.B.D. 569). But he does “recover” a sum paid into court and which he accepts in satisfaction (*Parr v Lillicrap*, 32 L.J. Ex. 150; *Boulding v Tyler*, 32 L.J.Q.B. 85).

So, money found due by an award in an action is “recovered” (*Cowell v Amman Co*, 34 L.J.Q.B. 161).

But when a statute prescribes that a penalty is to be “recovered” summarily before justices within (say) six months after the offence, the time for the complaint or information is not thereby “specially limited” (i.e. there is no definite limitation) so as to exclude s.11 of the Lunatic Asylums Act 1847 (c.43); and, if the complaint or information is made or laid within the proper time, the matter may be heard and the penalty “recovered” after that time (*Morris v Duncan* [1899] 1 Q.B. 4; but see *R. v Mainwaring*, 27 L.J.M.C. 278). See further ARISE.

“Sum recovered”: see *Johnson v Harris*, 24 L.J.C.P. 40; *Dixon v Walker*, 10 L.J. Ex. 43; *James v Vane*, 2 E. & E. 883; *Scott's Standard Co v Northern Wheeleries Co* [1889] 2 I.R. 34; *Myers v Phelan*, 26 L.R. Ir. 218, 223. As regards the county court scales of costs, this phrase means the amount the plaintiff gets by the action, including any amount that may have been paid him by the defendant after action brought (*Keeble v Bennett* [1894] 2 Q.B. 329; *White v Headlands Co* [1899] 1 Q.B. 507; overruling *Bailey v Watson* [1898] 2 Q.B. 270; *Pearce v Bolton* [1902] 2 K.B. 111; *Lamb v Keeping*, 111 L.T. 527). The principle of *White v Headlands Co* (above) applies to a defendant's costs (in which case “recovered” was deemed “CLAIMED”, r.18 of the County Court Rules 1903), and there the scale applicable is determined by the plaintiff's original claim in the action, though reduced by payment, e.g. under an order giving leave to defend on payment of part of the claim and then remittal to a county court for trial as regards balance (*Aston Tube Co v Dumbell* [1904] 1 K.B. 535). The “subject-matter”, as regards those scales, is, in an interpleader action, the value of the whole goods claimed, and (if any) the damages (*Studham v Stanbridge* [1895] 1 Q.B. 870). Cp. *Quinn v M'Kinlay* [1902] 2 I.R. 315, cited LESS.

The proceeds of a sale in a mortgagee's hands were not “recovered by any distress, action or suit”, within s.42 of the Real Property Limitation Act 1833 (c.27); therefore, arrears of interest for as far back as 20 years might be retained out of such proceeds (*Edmunds v Waugh*, L.R. 1 Eq. 418; *Re Marshfield*, 34 Ch. D. 721; see BY); so, the mortgagor had to pay all arrears of interest when he was claiming to redeem (*Dingle v Coppen* [1899] 1 Ch. 726). *Edmunds v Waugh*, *Re Marshfield*, and *Dingle v Coppen* were approved in *Re Lloyd* [1903] 1 Ch. 385, distinguished in *Re Hazeldine* [1908] 1 Ch. 34; see also *Sutton v Sutton*, 22 Ch. D. 511, cited CHARGED UPON. Cp. MERGER;

see also RENTCHARGE; *Dennerley v Prestwich Urban DC* [1930] 1 K.B. 334. So, though a loan, the interest on which was to vary with trade profits, could not be "recovered", if the borrower became bankrupt, until the general creditors were satisfied (s.5 of the Partnership Act 1865 (c.86))—yet this word did not extend to deprive the lender of such rights as he might have as mortgagee (*Ex p. Sheil, Re Lonergan*, 4 Ch. D. 789, rejecting *Ex p. MacArthur*, 40 L.J. Bank. 86). In *Ex p. Sheil* (above), James L.J. said, "I think the word 'recover' means 'recover' and does not mean retain". See also Limitation Act 1939 (c.21) s.18.

On that principle *Philpott v Jones* (4 L.J.K.B. 65) decided that a debt for spirituous liquors was not "recovered" within the Sale of Spirits Act 1751 (c.40) s.12, by crediting an unappropriated payment therefore.

"Recover" (s.2 of the Real Property Limitation Act 1833 (c.27)) see *Grant v Ellis*, 11 L.J. Ex. 228; *Irish Land Commission v Grant*, 10 App. Cas. 26. See Limitation Act 1939 (c.21) s.4.

"Recovered" may sometimes be read as "sued for" (see per Parke B., *Collins v Hopwood*, 16 L.J. Ex. 126). See further *Morris v Duncan*, above.

A power to a body to "recover", implies the power to sue by its collective designation though not incorporated (*Mills v Scott*, L.R. 8 Q.B. 496).

"Recovered as damages" in a local improvement Act incorporating Railway Clauses Consolidation Act 1845 (c.20), and Towns Improvement Clauses Act 1847 (c.34), meant so recovered before justices (*Blackburn v Parkinson*, 28 L.J.M.C. 7).

"Recover" a mine: see *Watson v Charlesworth* [1905] 1 K.B. 74.

"Sue for, recover and receive": see *Re Donson and Jenkins* [1904] 2 Ch. 219, cited BELONGING; see also *Page v Burtwell* [1908] 2 K.B. 758, cited OPTION.

"Recovers" (County Courts Act 1934 (c.53) s.47(1), now County Courts Act 1984 (c.28) s.20). Money paid into court and accepted is recovered within the meaning of this section (*Parkes v Knowles* [1957] 1 W.L.R. 1481).

When a statute gives a "penalty to be recovered before justices of the peace", but prescribes no method of recovering it, the proper method is by indictment (Dwar. 673, citing Salk. 606).

No "right to recover" a solicitor's county court costs without taxation: see ALLOW. See RECOVERED OR PRESERVED.

RECOVERABLE. In an undertaking by a solicitor to his client that "should the damages or costs not be recoverable in this action, I shall charge you costs out of purse only", the result of the action, and not the solvency of the defendant therein, is referred to (*Re Stretton*, 15 L.J. Ex. 16).

"Recoverable as a penalty": see *R. v Lewis* [1896] 1 Q.B. 665, cited PENALTY.

Agricultural Holdings Act 1923 (c.9) s.19: see *Horrell v Lord St. John of Bletso* [1928] 2 K.B. 616.

"Recoverable at any time within six months" (Increase of Rent and Mortgage Interest (Restrictions) Act 1923 (c.7) s.8(2)): see *Diment v Roberts* [1925] 1 K.B. 9.

Where under s.1(1) of the Law Reform (Contributory Negligence) Act 1945 (c.28), damages recoverable are to be reduced if there is contributory negligence, this means that if an action is brought in the county court the amount to be recovered is the sum recoverable, i.e. 200 in an action in tort, and not the damage sustained in fact by the plaintiff (*Kelly v Stockport Corp* [1949] 1 All E.R. 893).

"Recoverable rent": Stat. Def., Rent Act 1968 (c.23) ss.38, 67.

See CLAIMED; MAINTAIN; PROPERLY RECOVERABLE.

RECOVERABLE

RECOVERABLE PROPERTY. Once there are reasonable grounds to suspect that money is in a company's hands having been materially contributed to by illegal labour, the owner then has to show on the balance of probabilities that the money could not reasonably be suspected of being obtained through criminal conduct (*R. (Chief Constable of Greater Manchester Police) v City of Salford Magistrates' Court* [2008] EWHC 1651 (Admin)).

RECOVERED. See RECOVER.

"Sum recovered": see RECOVER.

"When recovered": see WHEN.

RECOVERED OR PRESERVED. Property is "recovered or preserved" (Legal Aid and Advice Act 1949 (c.51) s.3(4)) when the plaintiff has been enriched as a result of the action (*Wagg v Law Society* [1957] Ch. 405).

"Property . . . recovered or preserved": see PROPERTY.

See CHARGING ORDER; PROPERTY.

RECOVERY. A reward "on recovery" of property (lost or stolen) and conviction of offender, without more, is payable only to the person "who is the original and meritorious cause of the recovery" and conviction (per Tindal C.J., *Thatcher v England*, 15 L.J.C.P. 253).

See COMMON RECOVERY.

RECOVERY OF LAND. An action for the "recovery of land", as mentioned in R.S.C., is equivalent to the old action of ejectment to obtain possession; and does not include an action for declaration of the title (*Gledhill v Hunter*, 14 Ch. D. 492, disapproving *Whetstone v Dewis*, 1 Ch. D. 99); cp. *Millett v Ballard* [1904] 2 K.B. 593, cited EJECTMENT.

A foreclosure or redemption action was an action for recovery of land (*Heath v Pugh*, 6 Q.B.D. 345; *Harlock v Ashberry*, 19 Ch. D. 539); but not for the recovery of possession of land within the old R.S.C. Ord.42 r.5, now Ord.45 r.3 (*Wood v Wheeler*, 22 Ch. D. 281). Then, for the purposes of the old R.S.C. Ord.18 r.2, neither foreclosure nor redemption was to be "deemed an action for the recovery of land".

Proceedings for "protection" or "recovery" of settled land: see PROTECTION.

RECOVERY OF PROPERTY. An action to recover a share of an intestate's property, though in form an action for partition only, is not for the "recovery of property" (*Ponnamma v Arumogam* [1905] A.C. 383).

RECOVERY VEHICLE. (Vehicles (Excise) Act 1971 (c.10) s.16(8).) Appropriately constructed vehicles are not prevented from being "recovery vehicles" within the meaning of this section just because they are being used to transport disabled vehicles (*Harvey (T.L.) v Hall* [1986] R.T.R. 334). See also BREAKDOWN VEHICLE; SPECIALISED.

Stat. Def., Finance Act 1987 (c.16) Sch.1 Pt II para.2.

RECREATION. "Rational recreation": see ENTERTAINMENT.

"Re-creation": see EXTENSION.

RECRUDESCENCE. In relation to disease, may mean either the breaking out of an old but dormant disease, or the repetition or recurrence of a disease which had entirely disappeared (*Astbury v William Harrison*, 35 B.W.C.C. 85 at 93).

RECTIFY. Altering the register of a company so as to make it conformable with a lawful transfer, was not to "rectify" the register under s.35 of the Companies Act 1862 (c.89) (see Companies Act 1985 (c.6) s.359). That section only came into operation when the company improperly put on the register a name which ought not to be on it,

or improperly refused to put on the register a name which ought to be on it (per Lindley L.J., *Re National Bank of Wales*, 66 L.J. Ch. 225, cited SHARE).

The court has no jurisdiction to rectify the articles of association of a company (*Scott v Frank F Scott (London) Ltd* [1940] Ch. 794).

A contract can be rectified so as to give effect to the concurrent intention of the parties at the time of its execution, even if there be no previous binding contract in existence between them (*Shipley Urban DC v Bradford Corp* [1936] Ch. 375).

As to rectification *ex facie* of an old settlement containing no words of limitation in the ultimate gift, see *Banks v Ripley* [1940] Ch. 719.

“Loss by the rectification” of the register (s.83 of the Land Registration Act 1925 (c.21)): see *Att-Gen v Odell* [1906] 2 Ch. 47, in which case Stirling L.J. applied *Sheffield v Barclay* [1905] A.C. 392, cited WARRANTY. See also MISTAKE.

“Rectification of register of charges”: see Companies Act 1948 (c.38) s.101.

The natural meaning of rectification includes rectification with retrospective effect (*Malory Enterprises Ltd v Cheshire Homes Ltd* [2002] 3 W.L.R. 1, CA).

RECTOR. “‘Rector’ signifies a governor; and *rector ecclesiae parochialis* is he that hath the charge or cure of a parish church” (Cowel); but the appellation of “‘parson’ (however it may be depreciated by familiar, clownish, and indiscriminate use) is the most legal, most beneficial, and most honourable title that a parish priest can enjoy; because such a one (Sir Edward Coke observes), and he only, is said *vicem seu personam ecclesiae gerere*” (1 Bl. Com. 384).

“The priest of every parish is called rector, unless the praedial tythes be impropriated and then he is called vicar, *quasi vice fungens rectoris*” (Cowel).

As to the rector’s rights in the church and churchyard, see judgment of Blackburn J., *Greenslade v Darby*, L.R. 3 Q.B. 421, cited PERPETUAL CURATE; 1 Bl. Com. 384.

See CLERGYMAN; MINISTER; VICAR.

RECTORY. “By the grant of a rectory, or parsonage, will pass the house, the glebe, the tithes, and offerings, belonging to it. And by the grant of a vicarage will pass as much as doth belong unto it, as the vicarage house, etc.” (Touch. 93).

“The word ‘rectory’ comprehends the parish church, with all its rights, glebes, tithes, and other profits whatsoever” (5 Cru. Dig., Title 35, Ch.6, s.14). See also Spelman; Cowel; Jacob, *Parsonage*; Elph.

Rectories with cure of souls (Tithe Rentcharge (Rates) Act 1889 (c.17) s.2(1)(b)) do not include rectories commonly known as sinecures (*Greening v Queen Anne’s Bounty* [1932] 1 Ch. 348).

See ADVOWSON; PARSONAGE.

RECURRENT. A wife who eleven years and three years before marriage had been admitted to a mental hospital, for periods of four weeks and two weeks respectively, for the purpose of undergoing shock treatment, had not suffered from “recurrent attacks of insanity” within the meaning of s.9(1)(b)(iii) of the Matrimonial Causes Act 1965 (c.72) (*Bennett v Bennett* [1969] 1 W.L.R. 430).

RECUSANT. A recusant is one who obstinately refuses to frequent divine service in the Church of England (65TH CANONS ECC. 1604). See further 35 Eliz., c.1.

Popish recusants convict: see 4 Bl. Com. 54 et seq., 124.

See *Brown v Montreal Cure*, L.R. 6 P.C. 157.

RECYCLING. See *R. v Environment Agency, Ex p. Mayer Parry Recycling Ltd* [2003] 3 C.M.L.R. 8, ECJ.

REDDENDUM

REDDENDUM. The reddendum is the clause in a lease whereby the rent is reserved, and commonly begins with the words "yielding and paying". See hereon 2 Bl. Com. 299; Woodf. (24th edn), 223.

REDECORATION. "Redecoration" of a building within the meaning of reg.2(1) of the Building (Safety, Health and Welfare) Regulations 1948 (No.1145) includes cleaning preparatory to painting (*O'Brien v UDEC*, 5 K.I.R. 449).

REDEEM. Money expended by a tenant for life "in redeeming" rent-charges created to defray expenses of improvements under Settled Land Act 1882 (c.38), "or otherwise providing for the payment thereof", were to be treated as being for an IMPROVEMENT under the Settled Land Act 1882, for which capital money might be employed (Settled Land Act 1887 (c.30) s.1); that meant that there had to be a "redeeming" from the principal money secured; and although, in so redeeming, you also paid interest and costs or might have had to pay a bonus in order to redeem, all of which would have been "money expended in redeeming" (*Re Egmont*, 45 Ch. D. 395; *Re Verney* [1898] 1 Ch. 508), yet money spent by the tenant for life for the mere separate purpose of reducing interest was not within the phrase (*Re Verney*, above, but see Settled Land Act 1925 (c.18) s.85(3)).

"To redeem": Stat. Def., Trading Stamps Act 1964 (c.71) s.10.

REDEEMABLE. "Redeemable", as applied to debentures, imports, prima facie, an OPTION to the company, not an obligation to redeem (*Re Chicago & North Western Granaries Co* [1898] 1 Ch. 263). See further *Re Stocks*, 54 S.J. 31. See also *Edinburgh Corp v British Linen Bank* [1913] A.C. 133; *Northern Assurance Co v Farnham United Breweries Ltd* [1912] 2 Ch. 125, cited IRREDEEMABLE.

REDELIVERY. For the meaning of redelivery in a charterparty as applied to a ship, see *Italian State Railways v Mavrogordatos* [1919] 2 K.B. 305.

REDEMPTION. "Stat. Marlbridge, c.3. 'Non ideo puniatur dominus per redemptionem'. 'Redemption' is FINE; and *finis dicitur quia finem litibus imponit*; the party redeems his offence for a sum of money, which makes an end of his transgression and of his imprisonment for it" (Dwar. r.690, citing *Griesley's Case*, 8 Rep. 41 a).

By s.73(1)(xiii) of the Settled Land Act 1925 (c.18), capital money may be applied "in redemption of an improvement rentcharge", this means discharge of instalments by means of a lump sum payment (*Re Sandbach* [1951] Ch. 791).

"Redemption annuity": Stat. Def., Tithe Act 1936 (c.43) s.3(1).

"Redemption of land tax": see LAND TAX; see also RIGHT OF REDEMPTION.

"Equity of redemption": see EQUITY.

REDEVELOPMENT. The act of demolition which precedes new building on a site can itself be "redevelopment" within the meaning of the Land Compensation Act 1973 (c.26) s.29 (*R. v Corby DC, Ex p. McLean* [1975] 1 W.L.R. 735). But site clearance prior to sale to a third party for redevelopment was not itself "redevelopment" within the meaning of this section (*Greater London Council v Holmes* [1984] 1 W.L.R. 1307).

Demolition of houses and site clearance undertaken by a local authority, so that it could be sold for private development, was "redevelopment" within the meaning of s.29 of the Land Compensation Act 1973 (c.26) (*Greater London Council v Holmes* [1986] Q.B. 989). So also was the demolition of a block of flats by the local authority landlord when it became dangerous (*Bulger v Knowsley BC* [1989] 10 C.L. 372).

RED-HANDED. See BLOODY HAND.

RE-DISSEISIN. See DISSEISIN.

REDUCE. The power of a company “to reduce” its capital (s.9 of the Companies Act 1867 (c.131)) need not (as at one time held) be a rateable reduction over all classes of capital, but authorises every mode of reduction (*British & American Corp v Couper* [1894] A.C. 399). See Companies Act 1948 (c.38) s.66. See CAPITAL.

Surrendering assets is not “reducing” capital within that section (*Thomson v Trustees Incorporation* [1895] 2 Ch. 454).

As to publication of the reasons for reduction under s.55 of the Companies (Consolidation) Act 1908 (c.69) see *Re Truman, Hanbury, Buxton & Co* [1910] 2 Ch. 498. See Companies Act 1985 (c.6) s.137(2)(b).

“Sum applied . . . in reducing share capital” (Finance Act 1947 (c.35) s.36(1)). Where redeemable preference shares were redeemed at a premium the amount of the premiums included in the aggregate sum was a sum applied in “reducing” share capital within the meaning of this section (*IRC v Universal Grinding Wheel Co* [1953] Ch. 499).

“Reduction of capital”: Stat. Def., Finance Act 1957 (c.49) Sch.VI(3).

REDUNDANCY. “28 Article 1(1)(a) of the directive defines ‘collective redundancies’ but fails to indicate the event triggering redundancy or to refer in this regard to the laws of the Member States. 29 In this connection, the need for uniform application of Community law and the principle of equality require that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community, which must take into account the context of the provision and the purpose of the legislation in question (see, *inter alia*, *Linster* (Case C-287/98) [2000] E.C.R. I-6917, para.43, and *Commission v Portugal* (Case C-55/02) [2004] E.C.R. I, para.45). 30 That being so, the concept of ‘redundancy’ referred to in Articles 2 to 4 of the directive must be given an autonomous and uniform interpretation within the Community legal system.” (*Junk v Kuhnel* (Case C-188/03) [2005] 1 C.M.L.R. 42, ECJ.)

Stat. Def., Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) s.195.

“By reason of redundancy”: see DISMISS.

RE-ENGAGEMENT. In an agreement to pay commission on all “re-engagements” of a theatrical, or other like artist, e.g. a music hall singer, “re-engagement” has no definite legal meaning; it can only be explained by illustrations, and its meaning must be determined on the facts of each case as a question of fact (*Arnold v Stratton*, 14 T.L.R. 537; *Robey v Arnold*, 14 T.L.R. 220).

See RENEWAL.

RE-ENTRY. The requirement of “a condition of re-entry” (s.7(3) of the Settled Land Act 1882 (c.38)) was not applicable to a lease by a tenant for life where the subject-matter was an incorporeal hereditament (*Re Sitwell* [1905] 1 Ch. 460, cited SURFACE): see Settled Land Act 1925 (c.18) s.42(1).

“Exercise any right of re-entry”, under Courts (Emergency Powers) Act 1914 (c.78) s.1(1): see *Ness v O’Neil* [1916] 1 K.B. 706.

A writ for recovery of possession is equivalent to an actual re-entry, but it must be an unequivocal demand of possession: see *Moore v Ullcoats Mining Co* [1908] 1 Ch. 575, and cases therein cited.

Right of: see FIRST ACCRUED.

See ENTRY; FORFEITURE.

RE-ESTABLISH

RE-ESTABLISH. (Social Security Act 1986 (c.50); Social Fund Directions, direction 4.) An applicant who had been previously resident in Ethiopia was refused a discretionary grant from the social fund on the grounds that she could not be said to be “re-establishing herself in the community” (*R. v Social Fund Inspector, Ex p. Ali* (1994) 6 Admin. L.R. 205).

REEVE. See BAILIFF.

RE-EXCHANGE. “Re-exchange” is the measure of damage sustained by the holder of a dishonoured bill of exchange drawn in one country on a person in another country, and is payable in addition to the amount of the bill (*Willans v Ayers*, 3 App. Cas. 133). See hereon Chalmers (11th edn), 188 et seq.

RE-EXECUTION. Of a will: see PUBLICATION.

REFER. “Referring the action to a master” (the old R.S.C. Ord.14 r.7, see now Ord.14 r.6(2)): see *Fraser v Fraser*, 49 S.J. 203, cited OFFICER.

“Referred” (Redundancy Payments Act 1965 (c.62) s.21(c); now Employment Protection (Consolidation) Act 1978 (c.44) s.101(1)(c)). An application for redundancy payment was held to have been “referred” to a tribunal when it was posted (*Nash v Ryan Plant International* [1977] I.C.R. 560). But this case was distinguished in *Secretary of State for Employment v Banks* [1983] I.C.R. 48, where it was held that the referral took place when the application was received by the office of the tribunal.

“An application cannot be referred to a person until he has received it.” (*R. (Lester) v London Rent Assessment Committee* [2003] 1 W.L.R.1449, CA per Waller L.J.)

REFER TO DRAWER. An actionable libel: see *Flach v London & South Western Bank Ltd*, 31 T.L.R. 334; amounts to a statement by the bank, “We are not paying, go back to the drawer and ask why”, or else, “Go back to the drawer and ask him to pay” (*Plunkett v Barclays Bank* [1936] 2 K.B. 107, 120). A non-trader is entitled to nominal damages only, in the absence of proof of special damage (*Gibbons v Westminster Bank Ltd* [1939] 2 K.B. 882).

REFERENCE. A power to an arbitrator to give the “costs of the reference” includes the costs of the award (*Re Walker and Brown*, 9 Q.B.D. 434). And when the arbitration is by an agreement without action, “costs of the reference” include the agreement and those preliminaries which were necessary to bring the parties *ad idem*; but in a reference at nisi prius the “costs of the reference” begin with the reference itself, the prior costs being costs in the cause (*Re Autothreptic Co and Hook*, 21 Q.B.D. 182). See ENTER.

“Reference is made to any document” (R.S.C. Ord.24 r.10(1)). This means a direct allusion. It would not cover a reference by inference (*Dubai Bank v Galadari (No.2)* [1990] 1 W.L.R. 731).

(Law of Property Act 1925 (c.20) s.141). “Reference to the subject matter”; Covenants to carry on the business of a petrol station, to keep the station open all day for the sale of the landlord’s products and to purchase from the landlord on his standard terms affected the mode of user of land and ran with it by virtue of s.141 (*Caerns Motor Services v Texaco* [1995] 1 All E.R. 247).

“73. Finally, there was discussion during the hearing why Parliament used the expression ‘reference’ as opposed to ‘appeal’. There is a precedent for using this term in FSMA. In my judgment, the term ‘reference’ is a recognition that the hearing before the Upper Tribunal is the first judicial hearing that there is in the PA04 scheme to consider the liability of the targets to the regulatory action which TPR proposes. It is noteworthy that TPR cannot refer a matter to the Upper Tribunal. Section 103(3) PA04

makes it clear that this is to be a full hearing and that there is no restriction on the evidence which may be adduced to (say) that which was before TPR when the Determinations Panel made its decision, as might be the case on a judicial review application. I therefore do not accept a submission that Lord Pannick made that this must be a lesser form of review because Parliament had to introduce section 103(3) PA04.”

Reference “by consent”: see CONSENT; CAUSE.

See ARBITRATION; DISPUTE.

REFERRED. For a discussion of the meaning of referral in the medical context see *Hussein v The General Medical Council* [2013] EWHC 3535 (Admin).

REFINERY. Stat. Def., Petroleum and Submarine Pipe-line Act 1975 (c.74) s.34.

REFORM ACT. Representation of the People Act 1832 (c.45).

REFORMATORY. See INEBRIATE; RETREAT.

REFRAIN. A creditor refrains from making a claim in relation to an obligation (for the purpose of s.6(4)(a) of the Prescription and Limitation (Scotland) Act 1973) when he does nothing to enforce it, whether as a result of a conscious decision or not (*BP Exploration Ltd v Chevron Shipping Co* [2001] 3 W.L.R. 949, HL).

REFRESHMENT. (Shops (Sunday Trading Restrictions) Act 1936 (c.53) Sch.I para.1(b)): a loaf of bread was a “refreshment” (*Binns v Wardale* [1946] K.B. 451).

“Meal or refreshment”: see MEAL.

“Light refreshment”: see LIGHT.

“Refreshment-bar”: see INN.

See ENTERTAINMENT; PUBLIC REFRESHMENT.

REFRESHMENT-HOUSE. Stat. Def., Public Health Act 1961 (c.64) s.80.

REFUGE. See ASYLUM; HARBOUR; RETREAT.

REFUGEE. The term “refugee” does not have the same meaning throughout the Geneva Convention 1951 (*R. v Secretary of State for the Home Department, Ex p. Jahangeer (Shala)* [1994] Imm.A.R. 564).

For the purposes of the Geneva Convention art.31, “refugee” included a bona fide asylum-seeker whose application had yet to be decided (*Khaboka v Secretary of State for the Home Department* [1993] Imm.A.R. 585).

Stat. Def., Education (Student Loans) Regulations 1998 (SI 1998/211) reg.3(1); Education (Mandatory Awards) Regulations 1998 (SI 1998/1166) reg.2.

(Convention and Protocol relating to the Status of Refugees art.1A(2).) An applicant had to have a current well-founded fear of persecution in order to be recognised as a refugee and it was not sufficient that he had such fear when he left his country of origin. In the context of a civil war, an applicant had to show a fear of persecution which was over an above the risks of clan warfare (*Adan v Secretary of State for the Home Department* [1998] 2 All E.R. 453).

For the purpose of art.1A(2) of the 1951 Convention relating to the Status of Refugees as modified by the 1967 New York Protocol to be a refugee required a well-founded fear of persecution on Convention grounds and not mere statelessness or inability to return to a country (*Revenko v Secretary of State for the Home Department* [2000] 3 W.L.R. 1519, CA).

The continuing effect of past acts of persecution did not amount to a current well founded fear of persecution, entitling a person to refugee status (*Hoxha v Secretary of State for the Home Department* [2002] EWCA Civ 1403, CA).

For the purposes of the 1951 Convention on Refugees "refugee" means any person with the requisite fear of persecution who is outside his country of nationality (*R. (European Roma Rights) v Prague Immigration Officer* [2005] 2 W.L.R. 1, HL).

The definition of "refugee" in art.1A(2) of the Refugee Convention is to be construed in the light of the Convention as a whole and, therefore, in part by reference to reasonableness of relocation (*Januzi v Home Secretary* [2006] UKHL 5).

A person is not a refugee if he can voluntarily return to his country of nationality in safety, even if compulsory return would be attended with risk (*A.A. v Home Secretary* [2006] EWCA Civ 401).

See also PERSECUTED; PERSECUTION.

REFUSE. "House refuse" (Public Health Act 1936 (c.49) s.72). Refuse generated by the occupants of a university hall of residence was held not to be "house refuse" within the meaning of this section (*Mattison v Beverley BC* (1987) 151 J.P. 499). Rubbish, which included mildewed carpeting, an old tin bath and various pieces of wood, metal and plastic, and which had accumulated on the balcony of council premises, was not "house refuse" within the meaning of this section (*Dear v Newham LBC* [1988] 20 H.L.R. 348).

Stat. Def., Public Health (London) Act 1936 (c.50) s.304; Civic Amenities Act 1967 (c.69) s.18(6); Refuse Disposal (Amenity) Act 1978 (c.3) s.1.

See IRON; RUBBISH; REFUSAL; REASONABLE CAUSE.

REFUSED. "Unreasonably refused to provide a written statement" (Employment Protection Act 1975 (c.71) s.70(4)). A simple failure to supply written reasons for dismissal within the specified time does not of itself amount to unreasonable refusal entitling the employee to an award. "Failure" is not synonymous with "refusal". Before the penal provisions of this section are invoked there must be some "unreasonable" conduct on the part of the employer (*Lowson v Percy Main & District Social Club* [1979] I.C.R. 568).

As to what is a refusal by a company to produce books and papers to a shareholder which by statute he has a right to inspect, so as to ground an application for a mandamus against the company, see *R. v Wilts & Berks Navigation*, 3 A. & E. 477; *R. v London & St. Katharine Docks Co*, 44 L.J.Q.B. 4; but see *Holland v Dickson*, 37 Ch. D. 672.

To "refuse or neglect" to take and use surname and arms of testator is not equivalent to "fail or omit", as it implies a conscious act of volition: see *Re Quintin Dick* [1926] 1 Ch. 992. Held not to apply to an infant, since the phrase "refuse or neglect" involves the exercise of legal discretion: see *Re Edwards* [1910] 1 Ch. 541.

An application for a dock workers' licence which has been withdrawn cannot thereafter be said to be "refused" within the meaning of s.13(1) of the Docks and Harbours Act 1966 (c.28) so as to entitle the applicant to compensation (*Boal Quay Wharfingers v King's Lynn Conservancy Board* [1971] 1 W.L.R. 1558).

"Refuses" (Road Safety Act 1967 (c.30) s.3(3)(6)). A refusal to supply a specimen of blood unless taken by the accused's own doctor was a refusal within the meaning of this section (*R. v Godden* [1971] R.T.R. 462). See FAIL.

"The grant of a licence may be refused" (Transport Act 1985 (c.67) s.16). A decision by a local authority to defer, for a few weeks, its decision whether or not to grant hackney carriage licences, pending a survey to determine whether there was an unmet demand for hackney carriages in the area, was not a refusal for the purposes of this section (*R. v Middlesbrough BC, Ex p. IJH Cameron (Holdings)* [1992] C.O.D. 247).

See WILFUL REFUSAL; NEGLECT; OMISSION; OMIT; FIRST REFUSAL; WILFUL NEGLECT.

REFUSING TRUSTEE. See DECLINING TRUSTEE; RETIRING.

REGARD. The natural implication to requiring a person to have regard to certain matters is that they have to be addressed in particular, but that other matters may also be considered as required (*Dunnachie v Kingston-upon-Hull City Council* [2004] 2 All E.R. 501, CA).

“For practical purposes, however, I see little difference between a duty to ‘take due steps to take account’ and the duty under s.49(A)(1)(d) to ‘have due regard to . . . the need to take steps to take account’. If steps are not taken in circumstances in which it would have been appropriate for them to be taken, i.e. in which they would have been due, I cannot see how the decision-maker can successfully claim to have had due regard to the need to take them.” (*Pieretti v London Borough of Enfield* [2010] EWCA Civ 1104.)

See DUE REGARD; HAVING REGARD TO; MUST HAVE PARTICULAR REGARD.

REGARDANT. “Villein regardant”: see GROSS.

REGATTA. See RACE.

REGISTER. A register of shareholders in a company (ss.25 and 35 of the Companies Act 1862 (c.89)) may consist of a book or document (or more than one, *Weikersheim’s Case*, 8 Ch. 831) “intended to be a register, although the requirements of the Act of Parliament as to the keeping of the register have not been exactly complied with; but I am not aware of any authority for saying that rough memoranda or sheets of paper, not intended as a register at all, but intended as materials from which a register may be prepared can be a register” (per Lindley L.J., *Re Agence Havas Co*, 63 L.J. Ch 539, in which case allotment sheets were rejected as a register). The “register” includes the entries of names of persons who have been, but have ceased to be, members (*Boord v African Co* [1898] 1 Ch. 596, cited INSPECT).

“Register tonnage” (s.9(4) of the Merchant Shipping Act 1867 (c.124)) and “registered tonnage” (s.9(3)) refer to the total gross tonnage as registered (*The Petrel* [1893] P. 320; see further *The Pilgrim* [1895] P. 117). See now Merchant Shipping Act 1894 (c.60) Sch.6 paras (2) and (3).

“Gross tonnage”: see GROSS. See further BURDEN.

“The register” in r.77(1)(a) of the Land Registration Rules 1925 (No.1093 (L28)) does not mean the global register of all registered land but refers only to the register of the individual title in question (*Dunning (AJ) & Sons (Shopfitters) v Skyes & Son (Poole)* [1987] 2 W.L.R. 167).

REGISTER (OF TITLE TO LAND). See now ss.1 and 132(1) of the Land Registration Act 2002 (c.9).

REGISTER OF PARLIAMENTARY ELECTIONS. Stat. Def., Recall of MPs Act 2015 s.22.

REGISTERED. “Registered British ship”: Stat. Def., Merchant Shipping Act 1894 (c.60) s.90(2).

Increase of “registered capital” in s.112 of the Stamp Act 1891 (c.39): see *Att-Gen v Anglo-Argentine Tramways Co* [1909] 1 K.B. 677; but see *Att-Gen v Tube Investments Ltd* [1930] W.N. 59.

“Registered proprietor”: Stat. Def., Registered Designs Act 1949 (c.88) s.44(1). See PROPRIETOR; see further FIRST REGISTERED PROPRIETOR; *Capital & Counties Bank v Rhodes* [1903] 1 Ch. 657, cited LEGAL ESTATE.

If a person sold an article as a trade-mark article and added the word “registered”, or like phrase, that was a representation that the trade-mark had been registered within s.105(1) of the Patents, Designs, and Trade-Marks Act 1883 (c.57) (subs.(2)); but merely to employ the phrase “trade-mark” did not necessarily imply that registration had been obtained (*Sen Sen Co v Brittens* [1899] 1 Ch. 692, commenting on and explaining *Lewis v Goodbody*, 67 L.T. 194). See further s.68 of the Trade Marks Act 1938 (c.22), in which Act registered trade-mark means a “trade-mark which is actually upon the register”.

“Entitled to be registered” (s.4(1) of the Representation of the People Act 1918 (c.64)); see *Quinn v Sinclair* [1920] 2 I.R. 192. Cp. Representation of the People Act 1949 (c.68) s.8.

Rights of common were registered within the meaning of the Commons Registration Act 1965 (c.64) whether the registration was provisional or final (*Dynevor (Lord) v Richardson* [1994] 3 W.L.R. 1091).

REGISTERED LAND. Stat. Def., s.132(1) of the Land Registration Act 2002 (c.9).

REGISTRABLE. “Registrable trade mark”: Stat. Def., Trade Marks Act 1905 (c.15) s.3; see further s.9. See also *Re Crosfield, etc.* [1910] 1 Ch. 118, cited **DISTINCTIVE**; *Re Brock* [1910] 1 Ch. 130, and *Re Gestetner* [1908] 1 Ch. 513, both cited **FANCY WORD**. See also **TRADE MARK**; *Re Davis' Trade Mark*, 137 L.T. 714. See Trade Marks Act 1938 (c.22) s.9.

Information can be “registrable” even before the relevant register exists (*R. v Soule Ali*, T.L.R., February 7, 2007, CA).

REGISTRAR OF COMPANIES. Stat. Def., Companies Act 2006 s.1060.

REGISTRATION. “Letters of registration”: see *Australian Gold Recovery Co v Lake View Consols* [1901] A.C. 142, cited **LETTER**.

Registration of the name of a holder of a coupon policy: see *General Accident Insurance Co v Hunter*, 53 S.J. 649.

REGISTRATION CARD. Stat. Def., “means a document which—(a) carries information about a person (whether or not wholly or partly electronically), and (b) is issued by the Secretary of State to the person wholly or partly in connection with a claim for asylum (whether or not made by that person)” (s.26A of the Immigration Act 1971 (c.77), inserted by s.148 of the Nationality, Immigration and Asylum Act 2002 (c.41)).

REGRATOR. “‘Forestaller’ is hee that buyeth corne, cattell, or other merchandize whatsoever is saleable, by the way as it commeth to markets, faires, or such like places to bee sold, to the intent that he may sell the same againe at a more high and deer price, in prejudice and hurt of the commonwealth and people” (Termes de la Ley, Forestaller). Cp. **INGROSSER**.

“‘Regrator’ is he that hath corn, victuals, or other things sufficient for his owne necessary need, occupation, or spending, and doth nevertheless ingrosse and buy up into his hands more corne, victuals, or other such things, to the intent to sell the same againe at a higher and deerer price, in faires, markets, or other such like places, whereof see the stat. 5 Edw. 6, c.14, for he shall be punished as a forestaller” (Termes de la Ley, Regrator). See hereon Cowel; Jacob, *Forestalling*.

By the Indemnity Act 1845 (c.24), the offences of forestalling, regrating, and engrossing are abolished; but s.4 preserves “the offence of knowingly and fraudulently spreading, or conspiring to spread, any false rumour with intent to enhance or decry

the price of any goods or merchandise”, and also “the offence of preventing, or endeavouring to prevent, by force or threats any goods wares or merchandise being brought to any fair or market”: see hereon per Fry L.J., *Mogul Co v McGregor*, 23 Q.B.D. 621.

REGRESS. See **INGRESS**.

REGULAR. “A bill, complete and regular on the face of it” (Bills of Exchange Act 1882 (c.61) s.29(1)): see *Arab Bank v Ross* [1952] 2 Q.B. 216, concerning what is “regularity” in a bill.

REGULAR ARMY. Stat. Def., “any of Her Majesty’s military forces other than—(a) the Army Reserve;

(b) the Territorial Army; and (c) forces raised under the law of a British overseas territory” (Armed Forces Act 2006 s.374).

REGULAR CLERGYMAN. A “regular clergyman of the Church of England” does not merely mean one who is duly ordained; he must also be duly inducted, or licensed by the bishop to perform divine service or preach, and (if not in his own parish) he must have the consent of the rector or vicar (*Foundling Hospital v Garrett*, 47 L.T. 230). In that case Brett L.J. said that “regular” clergyman meant not only a clergyman of the Church of England, “but also a clergyman who can, without ecclesiastical irregularity, perform duty”; and Cotton L.J. said, “‘regular clergyman’ at least requires that he shall be regular in performing divine service, not only with reference to the doctrine he preaches, but as regards performing, in the proper way, the services” in the place of his ministrations.

See **MINISTER**; cp. **REGULAR MINISTER**.

REGULAR FORCES. Stat. Def., “the Royal Navy, the Royal Marines, the regular army or the Royal Air Force” (Armed Forces Act 2006 s.374).

REGULAR JOCKEY. See **JOCKEY**.

REGULAR LINE OF BUILDINGS. See **GENERAL LINE OF BUILDINGS**.

REGULAR MINISTER. “Regular minister of any dissenting congregation” (s.28 of the Municipal Corporation Act 1835 (c.76), replaced by s.12(1)(b) of the Municipal Corporations Act 1882 (c.50)): “regular minister” “means a minister who is regularly invited by the congregation to accept the office of their minister, and who accepts that office—something quite different from a man who merely temporarily holds the office” (per Mellor J., *R. v Oldham*, L.R. 4 Q.B. 290).

Cp. **REGULAR CLERGYMAN**.

REGULAR NOTICE TO QUIT. See **NOTICE TO QUIT**.

REGULAR OCCUPATION. (National Insurance (Industrial Injuries) Act 1946 (c.62) s.14.) In determining the amount of special hardship allowance to be allowed under this section, the applicant’s “regular occupation” meant his occupation generally, and was not restricted to any particular place or time (*R. v Deputy Industrial Injuries Commissioner, Ex p. Humphreys* [1966] 2 Q.B. 1).

The “regular occupations” of a claimant for a special hardship allowance under the National Insurance (Industrial Injuries) Act 1965 (c.52) s.14(1) is that which he had at the time of his first application, and not that which he later took as a result of medical advice given at the time of the first application (*R. v Industrial Injuries Commissioner, Ex p. Langley* [1976] I.C.R. 36).

See **ALSO EQUIVALENT STANDARD**.

REGULAR PAYMENT. See **PUNCTUAL**.

REGULAR RUNNING. In an agreement to pay an annual rent for advertisements in each and every “regular running” electric car, “a ‘regular running’ car is one which, at the beginning of the year, can be correctly spoken of as part of the regular rolling stock which is to be used during the year as a constituent part of the undertaking, to be bona fide employed and run as often as necessary. Regularity depends on the nature and requirements of the route and exigencies of the traffic; a car is none the less a ‘regular running’ car because it is sometimes withdrawn for the purpose of being repainted or repaired” (per Buckley J., *Griffiths & Co v Southampton*, 70 J.P. 179).

Cp. RUNNING DAYS.

REGULAR TURNS OF LOADING. See TURN.

REGULARITY. The refusal by governors of a charity to accept a nominee on to their body is not a matter “affecting the regularity or validity” of their proceedings (*R. v Charity Commissioners* [1897] 1 Q.B. 407).

REGULARLY. See FAIRLY; cp. REASONABLY.

Payments guaranteed to be “regularly made”: see *Simpson v Manley*, 2 Cr. & J. 12, cited CREDIT. Cp. PUNCTUAL.

“Regularly manufacturing” goods means manufacturing the goods in the ordinary course of business, during the period in question, as they were required in day to day business (*British Thomson-Houston Co Ltd v Crompton Parkinson Ltd*, 32 R.P.C. 409).

“Regularly works” (Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 (SI 1983/1598) reg.7(2)(b)). “Regularly” imports the concept of uniform re-occurrence or repetition as distinct from that which occurs casually or intermittently (Decision No.R.(V) 2/88).

REGULATE. To “regulate” a supply of water does not mean to shut it off altogether. Therefore, where an Act required the consumers of water to provide “proper ball or stop-cocks, or other necessary apparatus, for regulating” the supply, that did not include an out-of-door screw-down valve, whereby the water could be shut off from coming into a consumer’s house (*Ward v Folkestone Water-works Co*, 24 Q.B.D. 334).

A power to make a by-law to “regulate and govern” a trade does not authorise the prohibition of such trade; “there is a marked distinction between the prohibition or prevention of a trade and the regulation or governance of it; and, indeed, a power to ‘regulate and govern’ seems to imply the continued existence of that which is to be regulated or governed” (*Toronto v Virgo* [1896] A.C. 88; *Ontario v Canada* [1896] A.C. 348). See PEACE.

Whenever an Act authorises the making of rules for “regulating” matters under it, that does not validate a rule which creates a new jurisdiction (*King v Henderson* [1898] A.C. 720).

“Regulating . . . procedure” (Supreme Court of Judicature (Consolidation) Act 1925 (c.49) s.99(1)). As the benefit which a defendant derives from the Statute of Limitations is procedural, R.S.C. Ord.20 r.5, which empowers the court to allow the plaintiff to amend his pleading, is a rule for “regulating” procedure within the meaning of the section (*Rodriguez v Parker (R.J.)* [1967] 1 Q.B. 116).

“Regulating the marketing” (Agricultural Marketing Act 1931 (c.42) s.1 (1)). A scheme “regulating the marketing” of an agricultural product had to be one which

introduced some orderly system of marketing. One which was from start to finish purely discretionary did not suffice (*Tuker v Ministry of Agriculture Fisheries and Food* [1960] 1 W.L.R. 819).

“Regulating the movement of traffic” (Highways Act 1959 (c.25) s.65). The power given by this section to the highway authority to construct works at road junctions for “regulating the movement of traffic”, does not extend to closing the central reservation of a dual carriageway, thus causing a long diversion (*Birmingham and Midland Motor Omnibus Co v Worcestershire CC* [1967] 1 W.L.R. 409).

“Regulating the exercise” (Matrimonial Homes Act 1967 (c.75) s.1(2)). The power given to the court by this section to regulate the exercise by the wife of her right to occupy the matrimonial home does not extend to prohibiting the husband who owns it from occupying it (*Tarr v Tarr* [1972] 2 W.L.R. 1068).

“Regulating . . . the disposition” (Finance Act 1949 (c.47) s.28(2)) means governing the disposition (*Philipson-Stow v IRC* [1961] A.C. 727).

“Regulated agreement”: Stat. Def., Consumer Credit Act 1974 (c.39) s.189.

“Regulated tenancy”: Stat. Def., Rent Act 1968 (c.23) s.7(2); Rent Act 1977 (c.42) s.18.

“For the purpose of restricting or regulating the development or use of the land”: see **RESTRICT**.

REGULATION. “Regulation of general application” (Indemnity Act 1920 (c.48)): see *Moss SS Co v Board of Trade*, 92 L.J.K.B. 398.

“Regulations” (s. 9 of the Companies Act 1867 (c.131)) meant the articles of association, and not the memorandum of association (*Re Dexine Co*, 88 L.T. 791).

“Regulations as to the navigation of vessels” (s.37(1) of the Defence of the Realm Regulations): see *Direct US Cable Co v Western Union Telegraph Co* [1921] 1 Ch. 370.

“Regulations . . . shall not be made unless a draft . . . has been laid before Parliament” (Supplementary Benefits Act 1976 (c.71) s.33(3)(c) as substituted by Social Security Act 1980 (c.30) Sch.2 para.28). An explanatory booklet issued to explain their operation was not a part of the regulations themselves (*R. v Department of Health and Social Security, Ex p. London Borough of Camden*, *The Times*, March 5, 1986).

REGULATIONS. See **GIVEN EFFECT TO BY REGULATIONS**.

REGULATORY BODY. Stat. Def., “a person who exercises regulatory functions in relation to a particular description of persons with a view to ensuring compliance with particular standards of conduct (whether statutory or non-statutory) by those persons” (Consumers, Estate Agents and Redress Act 2007 s.41).

REGULATORY FUNCTION. Stat. Def., “means—(a) a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or (b) a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity” (Legislative and Regulatory Reform Act 2006 s.32(2)).

Stat. Def., Deregulation Act 2015 s.111.

REGULATORY FUNCTIONS. Stat. Def., Regulatory Reform (Scotland) Act 2014 s.1.

REGULATORY REQUIREMENT. Stat. Def., Regulatory Reform (Scotland) Act 2014 s.1.

REHABILITATION. Stat. Def., Finance Act 1946 (c.64) s.37(5); Finance Act 1947 (c.35) s.24.

REHEARING. See REVIEW.

REIMBURSE. See TAKE AND APPROPRIATE.

“Reimbursement”: see COLLATERAL.

“Reimbursement for improvements”: see IMPROVEMENT.

REINSTATE. When a fire policy gives the insurers an option to “reinstate or replace” the insured property instead of making payment for damage, “the word ‘reinstate’ applies to property which is damaged, and the word ‘replace’ to that which is destroyed” (per Cotton L.J., *Anderson v Commercial Union Assurance*, 55 L.J.Q.B. 149); and “when one is dealing with property in the nature of chattels, the term ‘reinstate’ means to replace the chattels not *in situ* but *in statu*; and all that the insurers are bound to do is to make the chattels as good as they were before the fire” (per Bowen L.J., *Anderson*). Accordingly, it was held in that case that the insurer’s option as regards machinery would not be affected by the mere fact that the building in which it was had been destroyed, or that the term of the assured had been determined.

In the context of condonation “reinstatement” may arise through a resumption of cohabitation even though there is no resumption of sexual intercourse (*Hearn v Hearn* [1969] 1 W.L.R. 1832).

“Reinstate the former residential occupier” (Housing Act 1988 (c.50) s.27(7)(b)). The offer of a key to a wrecked room did not amount to reinstatement within the meaning of this section (*Tagro v Cafane* [1991] 2 All E.R. 235).

“To reinstate is, as defined in the *Oxford English Dictionary*, ‘to reinstall or re-establish (a person or thing) in a place, station, condition, etc; to restore to or in a proper state; to replace’. This is the sense in which the expression has long been understood in the courts of both Scotland and England. In *William Dixon Ltd v Patterson* 1943 S.C.(J) 78 at 85 the Lord Justice Clerk (Cooper) stated: ‘The natural and primary meaning of to reinstate as applied to a man who has been dismissed (ex hypothesi without justification) is to replace him in the position from which he was dismissed, and so to restore the status quo ante the dismissal.’ Tucker J. in *Hodge v Ultra Electric Ltd* [1943] K.B. 462 at 466 spoke to similar effect: ‘It appears to me that reinstatement involves putting the specified person back, in law and in fact, in the same position as he occupied in the undertaking before the employer terminated his employment.’ In a provision first enacted in s.69(2) of the Employment Protection (Consolidation) Act 1978, an order of reinstatement is now defined in s.114 of the Employment Rights Act 1996 to mean an order that ‘the employer shall treat the complainant in all respects as if he had not been dismissed’ . . . What, then, is required of a school where, as here, the appeal of a permanently excluded pupil has been allowed and his reinstatement ordered . . . ? I cannot accept that the requirement of reinstatement is met merely by restoration of a formal relationship between school and pupil or by the school’s formal resumption of responsibility for the education of the pupil. That is to take an unrealistic and legalistic view of a practical educational situation. What has to be reinstated is a pupil, not a legal relationship. That reinstatement in this context means substantial restoration of the status quo before the exclusion so far as practicable is clear not only from the meaning and legal usage of this expression, considered above, but also from the disciplinary scheme of which exclusion forms part.” (*R. (L.) v J School Governors* [2003] 2 W.L.R. 518 at 526–27, HL per Lord Bingham of Cornhill.)

“Reinstatement and making good”: Stat. Def., Public Utilities Street Works Act 1950 (c.39) s.39.

REINSTATEMENT. For the purposes of s.71 of the Traffic Management Act 2004, a reinstatement is not complete until the requirements of the section have been fully met (*Hertfordshire County Council v National Grid Gas Plc* [2007] EWHC 2535 (Admin)).

RE-INSURANCE. “‘Re-insurance’ connotes the idea of something already insured”: it is to indemnify the re-insurers against the risk covered by the policy which they themselves have issued (per Bigham J., *Marten v Steamship Owners’ Underwriting Association*, 71 L.J.K.B. 721; see further *Western Assurance v Poole* [1903] 1 K.B. 383, cited TOTAL LOSS).

As to re-insurance generally, see *Norwich Union Fire Insurance Society v Colonial Mutual Fire Insurance Co* [1922] 2 K.B. 461.

RE-ISSUE. Of debentures: see *Re New London & Suburban Omnibus Co* [1908] 1 Ch. 621, cited CREATE. The power in s.75 of the Companies Act 1929 (c.23)—see Companies Act 1985 (c.6) s.194—to re-issue debentures which have been redeemed is a power to re-issue debentures containing exactly the same provisions as those of the previous issue; there is no power to extend the redemption date (*Re Antofagasta (Chili) and Bolivia Railway Company Ltd’s Trust Deed* [1939] Ch. 732).

REJECTED. A claim to be on a burgess roll was “rejected” (s.24 of the Municipal Corporations Act 1837 (c.78)), if not allowed on it, although the cause of such non-allowance was the overseer’s neglect to send a burgess list for revision (*R. v Lichfield*, 1 Q.B. 453).

REJOINDER. A rejoinder, in pleading, was the defendant’s answer to the plaintiff’s replication; a sur-rejoinder was the plaintiff’s answer to the rejoinder (3 Bl. Com. 310).

REJOINING GRATIS. See *Winterbottom v Lees*, 2 Ex. 325; *Cooke v Blake*, 16 L.J. Ex. 151.

RELATE TO. For an alleged discriminator’s reason to relate to a disability for the purposes of the Disability Discrimination Act 1995, the relevant physical or mental condition must play a causative part in the decision-making process complained of (*Lewisham London Borough Council v Malcolm* [2008] UKHL 43).

RELATED. “Related offence” (Supreme Court Act 1981 (c.54) s.72(5)). Where a plaintiff brought proceedings to prevent an apprehended breach of his copyright, it was held that the defendant could not claim privilege on the ground that his answers might incriminate him as being involved in the manufacture and distribution of pornographic films, as this was a “related offence” within the meaning of this section (*Universal City Studios v Hubbard* [1984] 2 W.L.R. 492).

The term “related actions” within the meaning of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 art.21 was to be given a wide meaning and included actions commenced in different jurisdictions by different parties, which arose out the same cause of action (*The Maciej Rataj* [1995] E.C. All E.R. 229).

“Which relates to the carrying out of such operations” (Town and Country Planning Act 1971 (c.78) s.87(4)(b)). Where planning permission was granted for the construction of a replacement bungalow conditional on the existing bungalow being destroyed, it was held that the condition related to the carrying out of building operations—the replacement bungalow—and thus satisfied the conditions of this

RELATED

section (*Harvey v Secretary of State for Wales and Cardiff City Council* (1990) 88 L.G.R. 253). The time limit for enforcement imposed by this section applies only to the structure of the building, that is, that had something to do with the physical and visible characteristics. A breach of a condition relating to occupation was not protected (*Newbury DC v Secretary of State for the Environment, The Times*, July 19, 1993).

“Relate to the offence” (Misuse of Drugs Act 1971 (c.38) s.27). Only money or property shown to be connected with the crime for which a person has been convicted can be said to “relate to the offence”, and therefore forfeitable under this section; it would not include working capital held for the purpose of buying further drugs (*R. v Llewellyn* (1985) 7 Cr.App.R.(S.) 225; *R. v Simms* (1988) 9 Cr.App.R.(S.) 418).

“It was submitted by [Counsel] that there is a difference in meaning between ‘related to’ and ‘connected with’, and, that ‘connected with’ connotes a somewhat wider concept. We are unable to see such a distinction.” (*Re S (Restraint Order: Release of Assets)* [2004] EWCA Crim 2374 at [15], CA).

RELATED OFFENCE. An offence is “related to” fraud if it involves an element of deception (*Kensington International Ltd v Congo* [2007] EWCA Civ 1128).

RELATED TO. “Related to” and “relevant to” are not synonymous in the context of the Football Spectators Act 1989 (*Director of Public Prosecutions v Beaumont* [2008] EWHC 523 (Admin)).

RELATING. Statute “relating to” bankrupts: see *Dunn v The Queen*, 12 Q.B. 1031.

“Covenant relating to the matter of the lease” (s.77(2) of the Stamp Act 1891 (c.39)): see *British Electric Traction Co v Inland Revenue* [1902] 1 K.B. 441.

Expenses “in relation to” a highway: see *R. v Heath*, 12 L.T. 492.

In *Compagnie Financière v Peruvian Guano Co* (11 Q.B.D. 55), Brett L.J., defining words similar to those used in the old R.S.C. Ord.31 r.12, “relating to any matter in question”, said: “It seems to me that any document must be properly held to relate to matters in question in the action which not only would be evidence, but which it is not unreasonable to suppose does contain information which may, either directly or indirectly, enable a party either to advance his own case or to damage the case of his adversary. I used the expression, ‘directly or indirectly’, because it seems to me that a document may be properly said to be material if it is one which would naturally lead a party to a chain of inquiry which would lead him to one of those results”.

Police constables’ notebooks were held to be privileged from production as being documents relating solely to their own case (*Brookes v Prescott* [1948] 2 K.B. 133).

(Validation of War-time Leases Act 1944 (c.34) s.3.) A provision in a war-time lease did not “relate to” the duration of the tenancy if it was not conditioned or affected by the duration of the tenancy (*MW Investments v Kilburn Envoy* [1947] Ch. 370).

“Agreement relating to the sale of goods, wares, or merchandise” (Exemption 2 to the Stamp Act 1891 (c.39), tit.). Agreement includes an indemnity to a broker against loss on re-sale of the goods purchased (*Curry v Edensor*, 3 T.R. 524), or a memorandum of advance on goods handed over for immediate sale (*Southgate v Bohn*, 16 L.J. Ex. 50), or a guarantee for price of goods to be supplied to a third person (*Warrington v Furbor*, 8 East 242; *Sadler v Johnson*, 16 L.J. Ex. 178; *Chatfield v Cox*, 18 Q.B. 321; but see *Glover v Halkett*, 26 L.J. Ex. 416, below), or an indemnity against the claim of a third person to goods sold (*Heron v Granger*, 5 Esp. 269), or a warranty of quality on sale of goods (*Skrine v Elmore*, 2 Camp. 407; *Hughes v Breeds*, 2 C. & P. 159), or an agreement for sharing profit or loss on goods bought on a joint account (*Venning v Leckie*, 13 East 7), or for cancellation of a former sale and supply

of goods on different terms (*Whitworth v Crockett*, 2 Stark. 431), or for supply of future goods (*Pinner v Arnald*, 5 L.J. Ex. 1; *Gurr v Scudds*, 11 Ex. 190). But the exemption does not extend to a document in which the sale of goods is a secondary matter (*Smith v Cator*, 2 B. & Ald. 778); and does not cover an ordinary guarantee for debt, for that involves no sale of goods (*Glover v Halkett*, 26 L.J. Ex. 416), nor does it exonerate a document which on other grounds requires a stamp (*Horsfall v Key*, 2 Ex. 778).

A condition of sale empowering a vendor to rescind the contract if any objection should be made "as to the title, particulars, conditions, or any other matter or thing relating or incidental to the sale" which the vendor is unable or unwilling to comply with, enables the vendor to rescind on account of a requisition as regards a matter of conveyance as well as one as regards title (*Re Deighton and Harris* [1898] 1 Ch. 458, distinguishing *Bowman v Hyland*, 8 Ch. D. 588, cited *WHATSOEVER*). See further *Re Jackson and Haden* [1905] 1 Ch. 603, and *Proctor v Pugh* [1921] 2 Ch. 256, both cited *TITLE*.

"Information relating to the goods, or to the purchase... thereof" (Finance Act 1946 (c.64) s.20(3)). "It is not easy to see why [the phrase] should not mean and include information not only as to the character of the goods but also as to what has happened to them" (per Evershed L.J., in *Commissioners of Customs and Excise v Ingram* [1949] 2 K.B. 103).

Relating to payments on the death of children: see *Harker v Britannic Assurance Co* [1928] 1 K.B. 766; but see *Re Hirst*, 142 L.T. 291.

"Relating to or connected with" (R.S.C. Ord.16 r.1(1)(b)): see *Chatsworth Investments v Amoco* [1968] Ch. 665; *Standard Securities v Hubbard* [1967] Ch. 1056.

"Covenant relating to any land" (Law of Property Act 1925 (c.20) s.78). For discussion on the meaning of these words in a case which considered the effect of various subsequent transactions on a covenant restricting the density of a housing development, see *Federated Homes v Mill Lodge Properties* (1980) 254 E.G. 39.

"Relating only to costs" (Supreme Court Act 1981 (c.54) s.18(1)(f)). An appeal against a decision of the High Court or a county court that a solicitor is or is not to be personally liable for costs under R.S.C. Ord.62 r.8 is not an appeal "relating only to costs", but is one relating to the conduct of the solicitor (*Thompson v Fraser* [1986] 1 W.L.R. 17).

"Relating to" (Landlord and Tenant Act 1954 (c.56) s.10(1)). Where a covenant in a tenancy agreement required someone to contribute to the cost of insuring property or of repairing it or of lighting cleaning and maintaining it or even employing a caretaker to look after it the covenant could fairly be described as a term of the tenancy "relating to" that property within the meaning of this section (*Blatherwick (Services) v King* [1991] Ch. 218).

"In respect of, or relating to, any land" (County Courts Act 1984 (c.28) s.22(1)). A tree preservation order is an order relating to land for the purposes of this section (*Newport BC v Khan (Sabz Ali)* [1990] 1 W.L.R. 1185).

"Information relating to the proceedings" (Administration of Justice Act 1960 (c.65) s.12). Publication of the fact that a named person had applied to a mental health review tribunal did not disclose "any information relating to the proceedings" contrary to this section (*Pickering v Liverpool Daily and Echo Newspapers* [1991] 2 A.C. 370).

"In matters relating to a contract" (Civil Jurisdiction and Judgments Act 1982 (c.27) Sch.4 art.5(1)). The special jurisdiction conferred by this article in respect of "matters

RELATING

relating to a contract” requires either an actual contractual relationship or a consensual relationship closely akin to a contract (*Barclays Bank v Glasgow City Council* [1992] 3 W.L.R. 827).

The expression “matters relating to a contract” in Sch.1 art.5 of the Civil Jurisdiction and Judgments Act 1982 (c.27) was not to be interpreted by reference to the classification of causes of action in domestic law, and “contract” included a contract void ab initio (*Kleinwort Benson Ltd v Glasgow City Council* [1996] 2 W.L.R. 655).

A claim for restitution of monies paid under a purported agreement which was later accepted as void ab initio was not a matter “relating to a contract” within the meaning of art.5(1), nor being based on unjust enrichment was it a matter relating to tort or delict within the meaning of art.5(3) (*Kleinwort Benson Ltd v Glasgow City Council* [1997] 3 W.L.R. 923).

A claim which could be brought under contract and also, in English law, independently of the contract on the same facts was a “matter relating to a contract” within the meaning of art.5(1) (*Source Ltd v TUV Rheinholding A.G.* [1997] 3 W.L.R. 365).

An application for leave to issue a notice to remove a child from foster-parents was an application “relating to the adoption of a child” under the Adoption Act 1976 (c.36) s.6 (*Re C. (A Minor) (Adoption Notice: Local Authority)* [1994] 1 W.L.R. 1220).

Agreement “in relation to the use or hire of any ship”: see SHIP.

“Acts and things in relation to his property”: see GENERALLY.

“Cause or matter relating to real estate”: see ESTATE.

“Any agreement relating to a tenancy”: see AGREEMENT.

“Proceeding... relating to land” (Land Charges Act 1972 (c.61) s.17(1)): see PENDING LAND ACTION.

See IN RELATION TO.

RELATING TO. An order varying or discharging an injunction is an order “relating to” it for the purposes of the Civil Procedure Rules (*Richmond v Burch* [2006] EWHC 921 (Ch)).

“In our view the expression ‘relating to’ is capable of bearing a broader or narrower meaning as the context requires.” (*Svenska Petroleum Exploration AB v Lithuania* [2006] EWCA Civ 1529 at [137].)

“There is no doubt that the phrase ‘relating to’ is flexible in its meaning. In *Toothes Ltd v Commissioner of Stamp Duties (NSW)* (1961) 105 CLR 602, Kitto J reviewed a number of English authorities which considered the phrase ‘relating to’. Some adopted a narrow, others a wider view, each approach dictated by the purpose of the provision (at 617–8). Taylor J referred to the contract in which the phrase was used, and in the context there before the Court, it was clear that ‘relating to’ was not the equivalent to ‘referring to’; the relationship had to be based on some more substantial ground (at 620). ‘[T]he vital question is whether the instrument “relates” and not whether it may be “related” by an examination of extraneous circumstances’ (at 622).” (*Veolia ES Nottinghamshire Ltd v Nottinghamshire CC* [2009] EWHC 2382 (Admin).)

“24. As a matter of ordinary English, I would read ‘relating to’ in the phrase ‘sells any food after the date shown in a “use by” date relating to it’ as synonymous with ‘referring to’; or, in other words, as meaning simply that the food sold is the subject of a mark or label with a ‘use by’ date. It denotes a factual connection rather than a legal requirement. The word ‘relating’ is similarly used, for example, in regulation 35.

Dealing with the ways in which marking may be done, that regulation permits certain particulars to appear on the 'commercial documents relating to the food'. (In fairness to the Divisional Court, Mr Kirk acknowledged that its attention was not drawn to this point or to other examples in the regulations where 'relating to' is used in the sense of 'referring to'.)" (*Torfaen County Borough Council v Douglas Willis Ltd* [2013] UKSC 59.)

RELATING TO TRIAL ON INDICTMENT. (Courts Act 1971 (c.23) s.10(5), now Supreme Court Act 1982 (c.54) s.29(3)). Where two police officers were committed for trial and the judge ordered the chief constable to supply a list, detailing convictions, if any, of the jury panel members to the Crown and to the defence, the judge's order was in a matter "relating to trial on indictment" and accordingly the High Court had no jurisdiction to make an order of certiorari (*R. v Sheffield Crown Court, Ex p. Brownlow* [1980] Q.B. 530).

An order by a crown court trial judge that one of several courts in an indictment lie on the file and be not proceeded with without leave of the Crown Court or the Court of Appeal was a matter "relating to trial on indictment" within the meaning of this section (*R. v Sheffield Crown Court, Ex p. Fraser* [1984] Crim. L.R. 555). The decision of a judge to dismiss an appeal for legal aid, where the applicants had been committed for trial on charges of importing cannabis, related to a trial on indictment (*R. v Chichester Crown Court, Ex p. Abodunrin* (1984) 79 Cr.App.R. 293). But an order for estreat of recognisances did not (*Re Smalley* [1985] 2 W.L.R. 538).

"Matters relating to trial on indictment" (Supreme Court Act 1981 (c.54) s.29(3)). Orders made by a crown court judge that an indictment should lie on the file not to be proceeded with without the leave of that court or the Court of Appeal were "matters relating to trial on indictment" within the meaning of this section (*R. v Central Criminal Court, Ex p. Raymond* [1986] 1 W.L.R. 710). See also DISPOSE OF. A crown court, when issuing a witness summons under s.2(1) of the Criminal Procedure (Attendance of Witnesses) Act 1965 (c.69), was exercising its jurisdiction in a matter "relating to trial on indictment" within the meaning of s.29(3) of the 1981 Act (*Ex p. Rees, The Times*, May 7, 1986). The forfeiture order relating to two cars which the applicant had lent to his son, and which had been used on journeys to supply prohibited drugs, was not a matter "relating to trial on indictment" within the meaning of this section because it was not an order which affected the conduct of the son's trial (*R. v Crown Court at Maidstone, Ex p. Gill* [1987] All E.R. 129). A legal aid contribution order made by a magistrates' court, or a crown court, under s.7(1) of the Legal Aid Act 1982 (c.44) was not a matter "relating to trial on indictment" for the purposes of this section (*Sampson v Crown Court at Croydon* [1987] 1 All E.R. 609). An application to stay a criminal trial on the ground of abuse of process was not a matter "relating to trial on indictment" since such an application determined whether there should ever be a trial and did not affect the conduct of the trial (*R. v Central Criminal Court, Ex p. Randle* [1991] C.O.D. 227). The decision of a crown court whether or not to exercise its power under s.39 of the Children and Young Persons Act 1933 (c.12) to allow publication of particulars identifying a young person was not a matter "relating to trial on indictment" (*R. v Leicester Crown Court, Ex p. S.* [1991] C.O.D. 231). Whether a trial should be stayed because of delay in bringing the accused to trial was not a matter "relating to a trial on indictment" within the meaning of s.29(3) (*R. v Norwich Crown Court, Ex p. Belsham, The Daily Telegraph*, March 22, 1991). A costs order made against the prosecution in the Crown Court after verdicts of

not guilty had been recorded in the defendants' favour under s.17 of the Criminal Justice Act 1967 (c.80) was not a matter relating to trial on indictment (*R. v Wood Green Crown Court, Ex p. Director of Public Prosecutions* [1993] 1 W.L.R. 723). A decision by a trial judge determining whether or not the Crown Court had jurisdiction to try an indictment was held to be a matter "relating to trial on indictment" within the meaning of this section (*R. v Manchester Crown Court, Ex p. DPP* [1993] 1 W.L.R. 1524). A decision made under s.6 of the Criminal Justice Act 1987 (c.38) to dismiss charges before the trial begins is not part of a trial and is not therefore a matter relating to a trial on indictment (*R. v Central Criminal Court, Ex p. Director of Serious Fraud Office* [1993] 1 W.L.R. 949). The refusal by a Crown Court judge to fix a date for the trial of a charge of the possession of drugs was a "matter relating to a trial on indictment" (*R. v Liverpool Crown Court, Ex p. Mende* [1991] C.O.D. 483). The decision of a Crown Court judge to reinstate a prior legal aid order was a matter "relating to" a trial on indictment (*R. v Isleworth Crown Court, Ex p. Willington* [1993] 1 W.L.R. 713). An order of the Crown Court that the whole or part of an indictment should be stayed as an abuse of process was a decision "relating to trial on indictment" under this section (*R. v Manchester Crown Court and Ashton, Ex p. DPP* [1993] 2 W.L.R. 846).

A decision after argument as to the date of a trial on indictment was a matter "relating to trial on indictment", and was not susceptible of judicial review (*R. v Southwark Crown Court, Ex p. Ward, The Times*, August 19, 1994).

The arraignment of a defendant and the conduct of a plea and directions hearing were matters relating to a trial on indictment since the purpose of the arraignment was to determine the plea that he wished to enter in relation to the trial, so that provided the arraignment were properly conducted, the High Court had no jurisdiction to intervene by way of judicial review (*DPP v Crown Court at Manchester and Ashton* [1993] 2 W.L.R. 846 followed; *R. v Crown Court at Maidstone, Ex p. Hollstein* [1995] 3 All E.R. 503 and *R. v Crown Court at Maidstone, Ex p. Clark* [1995] 3 All E.R. 513 not followed; *R. v Crown Court at Leeds, Ex p. Hussain* [1995] 3 All E.R. 527).

A challenge to the manner in which an application for bail is dealt with is not precluded from judicial review as a "matter relating to trial on indictment" (*R. (Malik) v Central Criminal Court* [2006] EWHC 1539 (Admin)).

Decisions about confiscation and compensation following a criminal trial are matters relating to trial on indictment for the purposes of s.29(3) of the Supreme Court Act 1981 (*R. (Faithfull) v Crown Court at Ipswich* [2007] EWHC 2763 (Admin)).

RELATION. "Relation" is a term in law, where in consideration of law two things or other things are considered so as if they were all one, and by this the thing subsequent is said to take his effect by relation at the time preceding" (*Termes de la Ley*). See further Cowel.

"Relation back" is where a thing or act constructively relates back to an antecedent thing or act, e.g. a trustee in bankruptcy is appointed in proceedings commencing with a petition, but his title to property in the bankruptcy is deemed "to have relation back to, and to commence at the time of, the act of bankruptcy being committed on which a receiving order is made against him, or (if the bankrupt is proved to have committed more acts of bankruptcy than one) to have relation back to and to commence at the time of, the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the

bankruptcy petition" (s.43 of the Bankruptcy Act 1883 (c.52); on which see *Wms. Bank.* (7th edn), 171). See Act of 1914 (c.59) s.37; *Wms. Bank.* (16th edn), 243.

For a somewhat hard application of the doctrine of relation back in s.43 of the Bankruptcy Act 1883 (c.52) (s.37 of the 1914 Act (c.59), above) see *Davis v Petrie* [1906] 2 K.B. 786; *Ponsford v Union of London & Smith's Bank* [1906] 2 Ch. 444; *Re Fredericke* [1927] 1 Ch. 253.

"Relation back": the doctrine of "relation back" does not apply so as to enable an administrator to institute proceedings (other than an application for a receiver pending a grant) before he has obtained a grant. An action so instituted is incompetent and the issue of a grant does not make it competent (*Ingall v Moran* [1944] K.B. 160).

As regards a wrongdoer to realty, the title of an owner, legal or equitable, has a relation back from the time of his actual entry to the time of his right to enter (*Ocean Accident Corp v Ilford Gas Co* [1905] 2 K.B. 493, applying *Barnett v Guildford*, 11 Ex. 19; distinguished in *Elliott v Boynton*, 40 T.L.R. 180).

"In relation to": see RELATING.

RELATIONS. The Family Law Reform Act 1987 (c.42) s.1 now lays down as a rule of construction that references to relationships such as parent and child, brother and sister are to be construed, unless a contrary intention appears, without regard to whether or not any person's mother or father were married to each other at any particular time. See also Legitimacy Act 1976 (c.31) s.1(1).

For a list of authorities on the meaning of "relations" in testamentary cases, see FIFTH EDITION OF STROUD, Vol. 4, pp.2212–2214.

As to what is evidence establishing a relationship to a deceased, see *Smith v Tebbitt*, L.R. 1 P. & D. 354; *Doe d. Jenkins v Davies*, 10 Q.B. 314; *Re Crawford and Lindsay Peerages*, 2 H.L. Cas. 534; *Re Sussex Peerage*, 11 Cl. & F. 85.

A condition subsequent involving forfeiture if the beneficiary shall "have social or other relationship" with a certain named person is void for uncertainty (*Re Jones, Midland Bank Executor and Trustee Co v Jones* [1953] Ch. 125).

Stat. Def., Finance Act 1982 (c.39) s.44.

"Financial relations": see FINANCIAL.

See DEPENDANT; FRIENDS AND RELATIONS; NEAR RELATIONS; PRECATORY TRUST.

RELATIVE. A great uncle is not a "relative" for the purposes of s.72(1) of the Adoption Act 1976 (c.36) (*Re C. (Minors)* (1989) 133 S.J. 20).

Stat. Def., Income and Corporation Taxes Act 1988 (c.1) s.417; Children Act 1989 (c.41) s.105; Family Law Act 1996 (c.27) s.63(1); Housing Act 1996 (c.52) s.178(3); (including great-great-grandparents, etc.), Council Tax (Exempt Dwellings) Order 1992 (No.558) art.2(5) substituted by Council Tax (Exempt Dwellings and Discount Disregards) (Amendment) Order 1998 (No.291) art.2.

Stat. Def., "husband, wife, brother, sister, ancestor or lineal descendant" (Value Added Tax Act 1994 (c.23) Sch.6 para.1A inserted by Finance Act 2004 (c.12) s.22).

Stat. Def., "spouse or civil partner, ancestor or lineal descendant or brother or sister" (Income Tax Act 2007 s.395(6)).

See CLOSE RELATIVE; NEAR RELATIVE; RELATIONS.

RELATOR. The relator in an action or an information is a person who is aggrieved in a matter of public interest, and who (a) satisfies the attorney-general that the subject-matter of the action as to justify the use of that officer's name, or who (b) satisfies the court that the name of the Queen's coroner and attorney should be used in

the information: see hereon R.S.C. Ord.15 r.11; 3 Bl. Com. 264, 427; 4 Bl. Com. 308; Short and Mellor's Crown Office Practice (1st edn), Ch.8, especially p.292. See also *Gouriet v UPW* [1978] A.C. 435.

RELEASE. "Release... of any debt... in respect of any losses incurred by any person in... gaming" (Gaming Act 1968 (c.65)). Acceptance by the operators of a casino of lesser sums in satisfaction of amounts owing under dishonoured cheques amounted to the "release" of debts within the meaning of this section (*R. v Crown Court of Knightsbridge, Ex p. Marcrest* [1983] 1 All E.R. 1148).

As to when a document is a mere covenant not to sue and is not a release, see *Price v Barker*, 24 L.J.Q.B. 133; *Bateson v Gosling*, L.R. 7 C.P. 9; *Hutton v Eyre*, 6 Taunt. 289; *Duck v Mayeu* [1892] 2 Q.B. 511; but see hereon *Re E.W.A.* [1901] 2 K.B. 642.

Where a landlord agreed that if a tenant would pay the rent up to a certain future date and would give up possession, he would "release" him, without saying from what, it was held that the release, though in general terms, must be read as limited to the matters which were in the contemplation of the parties at the time when the release was given, and consequently did not release the tenant from liability for the past breaches of the covenant to repair: see *Richmond v Savill* [1926] 2 K.B. 530.

The word "release" in s.21(2) of the Firearms Act 1968 (c.27) means release from actual custody and not release from liability to custody under a suspended sentence (*R. v Fordham* [1970] 1 Q.B. 77).

"Releases or writes off the whole or part of the debt" (Income and Corporation Taxes Act 1970 (c.10) s.287(1) and 1988 (c.1) s.421(1)). Where the sale of the participators' shares in a closed company to a fellow participator included a novation of outstanding debts there was a "release" of those debts for the purposes of these sections (*Collins v Addies; Greenfield v Bains* [1991] S.T.C. 445).

See DEMAND; PREVENT; REMISE; SURRENDER.

RELEASE (OF A RIGHT). Stat. Def., including agreement to a restriction of the exercise of a right, s.5(2) of the Social Security Contributions (Share Options) Act 2001 (c.20).

RELEASE DATE. In relation to profit sharing schemes: Stat. Def., Finance Act 1978 (c.42) s.54(6).

RELEGATION. Is a BANISHMENT for less than life, and does not work civil death (Co. Litt. 133A). Cp. ABJURATION.

RELEVANCE. See PROBATIVE.

RELEVANT. "When I say 'relevant', I mean this, so nearly touching the matter in issue as to be such that a judicial mind ought to regard it as a proper thing to be taken into consideration" (per Lord Greene M.R. in *Tomkins v Tomkins* [1948] P. 170, 175).

"Relevant child" (Matrimonial Causes Act 1965 (c.72) s.34(1)) may be a person of 28 years of age (*D.(J.R.) v D.(J.M.)* [1971] P.132).

"Relevant child" (Matrimonial Causes Act 1965 (c.72) s.46(2)) cannot include children born to a wife as a result of secret adultery (*B. v B. & F.* [1969] P. 37). But a child may be a "relevant child" under this section in a second divorce suit to which only one of the parents is a party (*Newman v Newman* [1971] P. 43).

By a *Practice Direction* [1966] 1 W.L.R. 830 it is to be observed that the phrase "relevant children" used in the Matrimonial Causes Act 1965 (c.72) is defined in the Act merely for the purposes of that Act.

“Relevant circumstances”; as to what are “relevant circumstances” within Income Tax Act 1952 (c.10) s.289(1), now Capital Allowances Act 1968 (c.3) s.28(1) see *GH Chambers (Northiam Farms) v Watmough* [1956] 1 W.L.R. 1483.

“Relevant circumstances” (Matrimonial Proceedings (Magistrates’ Courts) Act 1960 (c.48) s.2(1)(b)) can include moral obligations and advantages which may not be legally enforceable (*Roberts v Roberts* [1968] 3 W.L.R. 1181).

“Relevant employees” (Trade Union and Labour Relations Act 1974 (c.52) Sch.1 para.7(2)(a), as amended by Employment Protection Act 1975 (c.71) Sch.16 Pt III para.13; now Employment Protection (Consolidation) Act 1978 (c.44) s.62 as amended by Employment Act 1982 (c.46) s.9) are not confined to those who are actually locked out but include all others directly involved in the dispute (*Fisher v York Trailer Co* [1979] I.C.R. 834). And where a fellow employee, not in dispute with the employers and not involved in the strike, stayed away from work through reluctance to cross the picket line, he was not thereby taking part in the strike and was not therefore a “relevant employee” within the meaning of this section (*McCormick v Horsepower* [1981] 1 W.L.R. 993). Where employees have gone on strike and are dismissed, two fellow employees who return to work before they receive their letters of dismissal are not “relevant employees” who have been dismissed and re-engaged within the meaning of this section (*Hindle Gears v McGinty* [1985] I.C.R. 111).

“Relevant event” (Iron and Steel (Compensation to Employees) Regulations 1968 (SI 1968/1170) reg.5). The “relevant event” which qualifies a dismissed employee for compensation under this regulation need be neither the sole cause nor the predominant cause. Thus, an employee dismissed as a result of reorganisation (the “relevant event”) and a recession in the industry, is entitled to compensation (*British Steel Corp v Chant; Same v Portman* [1974] I.C.R. 540).

“Relevant factor” (Gas Act 1948 (c.67) s.25(10)). An agreed valuation of the ordinary stock was not a “relevant factor” in valuing the preference and debenture of a gas company, nor was the depressing effect of impending nationalisation (*Studholme v Minister of Fuel and Power* [1951] 2 K.B. 804).

“All factors appearing to be relevant” (Domicile and Matrimonial Proceedings Act 1973 (c.45) Sch.1 para.9(2)). Remedies available to the parties in a foreign court, including the possibility or otherwise of dissolving the marriage there, the provision for custody of the children, and the cultural background of the parties can all be “relevant factors” for the purposes of this paragraph (*Shemshadfar v Shemshadfar* [1981] 1 All E.R. 726).

“Relevant offences” (Fugitive Offenders Act 1967 (c.68) s.3(1)). To be “relevant” under this section offences must be such as would be against the law of the United Kingdom if committed there (*R. v Brixton Prison Governor, Ex p. Gardner* [1968] 2 Q.B. 399; *R. v Brixton Prison Governor, Ex p. Rush* [1969] 1 W.L.R. 165). See also *R. v Governor of Pentonville* [1971] 2 Q.B. 274.

“Relevant profits” (Income Tax Act 1952 (c.10) Sch.16 para.9(1); now Income and Corporation Taxes Act 1970 (c.10) s.506(1)). In calculating double taxation relief regarding dividends paid by overseas companies, the “relevant profits” were the profits as shown in the accounts as available for distribution, and not the profits to the extent they had been assessed to the foreign tax (*Bowater Paper Corp v Murgatroyd* [1970] A.C. 266).

The words “relevant in support of” a plea of “undue influence” in R.S.C. Ord.76 r.9(3) do not exclude matters material to a plea of want of knowledge and approval on

the part of the testator, and they are therefore to be read in the restricted sense as applying merely to cases where the pleader was in substance making affirmative allegations of undue influence or one of the other cases listed in this rule (*Re Stott, Decd., Klouda v Lloyds Bank and Others* [1980] 1 W.L.R. 246).

“In conjunction with any other relevant matters” (Sexual Offences (Amendment) Act 1976 (c.82) s.1(2)). “Relevant matters” in this section are restricted to mean relevant matters properly before the jury, and would not permit any evidence to be adduced about any previous sexual experience of the complainant in a rape case, as this is expressly excluded by s.2(1) (*R. v Barton* [1987] Crim. L.R. 399).

“Relevant factor”; “relevant circumstances” (Statement of Changes in Immigration Rules (H.C. Paper (1982–83) No.66) paras 156, 158; Immigration Rules 1983 (H.C. 169) r.58). The adverse effect of a person’s deportation on third party interests, which could ultimately extend to the interests of the public as a whole, was a “relevant factor” or “relevant circumstance” within the meaning of these rules (*Singh v Immigration Appeal Tribunal* [1986] 2 All E.R. 721). Failure to understand the significance of the stamps in a passport was held not to be a “relevant circumstance” within the meaning of r.58 (*R. v Secretary of State for the Home Department, Ex p. Islam* [1990] C.O.D. 177).

A workshop designed to evaluate a person’s “true worth, potential value, skills and aspirations” rather than to find work was not a “relevant course” within the meaning of the Income Support (General) Regulations 1987 (SI 1987/1967) reg.22(1) (*Fowkes v Adjudication Officer* unreported).

“Relevant employees” (Employment Protection (Consolidation) Act 1978 (c.44) s.62(4)(b)(i) as amended by Employment Act 1982 (c.46) s.9 Sch.3 para.18). The test of who were “relevant employees” within the meaning of this section was a retrospective one, and, where there had been a lock-out, the tribunal had to consider who were the employees directly interested at the date of the lock-out (*Campey (H.) & Sons v Bellwood* [1987] I.C.R. 311).

“Relevant offence” (Fugitive Offenders Act 1967 (c.68) s.3(1)). A “relevant offence” for the purposes of this Act is one where, if the elements of the foreign offence were proved, an offence would have occurred against English law if the events had occurred in the United Kingdom. The court was not entitled to receive evidence to determine whether the fugitive’s conduct would found criminal charges in England (*Government of Canada v Avonson* [1989] 3 W.L.R. 436).

“Relevant period” (Criminal Justice Act 1967 (c.80) s.67, as amended by Police and Criminal Evidence Act 1984 (c.60) s.49). Time spent in custody in connection with an offence taken into consideration was not a “relevant period” for the purposes of this section (*R. v Towers* (1988) 86 Cr.App.R. 355). The period spent in custody awaiting trial in respect of one robbery was not a “relevant period” for the purposes of the sentence to be imposed for another different robbery (*R. v Secretary of State for the Home Office, Ex p. Read* (1987) 9 Cr.App.R.(S.) 206).

Only one period of remand in custody which constituted a “relevant period” within s.67(1) and (1A) of the 1967 Act so that a prisoner was entitled to a deduction of the period of remand in respect of his sentence in respect of the first sentence imposed only (*R. v Secretary of State for the Home Department, Ex p. Naughton* [1977] 1 W.L.R. 121; *R. v Governor of Brockhill Prison, Ex p. Evans* [1997] 2 W.L.R. 236).

For the purposes of s.67(1) and (1)(A) only one period of remand in custody could be credited against consecutive terms of imprisonment where there had been concurrent remands in custody (*R. v Secretary of State for the Home Department, Ex p. Naughten* [1997] 1 W.L.R. 118).

The “relevant part” of a discretionary life sentence within the meaning of the Criminal Justice Act 1991 (c.53) s.34(3) was the period before the Parole Board considered the case and not the period before the prisoner was to be released (*R. v Fox, The Times*, November 24, 1994). The “relevant part” of a discretionary life sentence amounts to an order (*R. v Dalton* [1995] 2 All E.R. 349).

“Relevant time” (Insolvency Act 1986 (c.45) ss.239, 240). The “relevant time” at which a company gives a preference, for the purposes of s.239, is the time when the decision to grant it was made, not the time when it was actually created (*Re M. C. Bacon* [1991] Ch. 127).

“Relevant circumstances” (Statement of Changes in Immigration Rules 1983 (H.C. 169) rr.52, 58). Emotional needs could be a “relevant” factor in deciding whether a parent was dependent upon a child for the purposes of r.52 (*R. v Immigration Appeal Tribunal, Ex p. Khatum*, [1989] Imm.A.R. 482). Assurances received by a student from a Home Office official, when she applied for an extension of time, that there would be no difficulty in her re-entering the United Kingdom after a trip abroad were “relevant circumstances” within the meaning of r.58 (*R. v Secretary of State for the Home Department, Ex p. Oloniluyi* [1989] Imm.A.R. 135). The expression “all relevant circumstances” in para.60 of H.C. 251 cannot give an immigration officer a wider discretion than that which is contained in the rest of the Immigration Rules (*Secretary of State for the Home Department v Patel (Veena)* [1992] Imm.A.R. 486).

“Relevant to any issue” (Police and Criminal Evidence Act 1984 (c.60) s.74(1)). Evidence of identification can be “relevant” for the purposes of this section (*R. v Grey* (1989) 88 Cr.App.R. 375).

“Relevant association with a visiting force” (Local Government Finance Act 1988 (c.41) Sch.1 para.2). A British citizen residing in the United Kingdom, who was named to a visiting serviceman and dependent upon him, was held not to be exempt from the personal community charge as she did not have a “relevant association with a visiting force”. For the purposes of this paragraph and within the meaning of s.12 of the Visiting Forces Act 1952 (c.67) (*Cherwell DC v Oxfordshire Valuation and Community Charge Tribunal, The Times*, November 18, 1991).

“Relevant notice” (Agricultural Holdings Act 1986 (c.5) Sch.3 Case G). The return by a tenant’s execution of a rent demand together with a cheque was held not to have amounted to a “relevant notice” within Case G (*Lees v Tatchell* [1990] 23 E.G. 62). A notice in the “deaths” column of the local newspaper was not a “relevant notice”; nor was a letter from a firm of solicitors informing the landlord’s manager that the tenant had died (*BSC Pension Fund Trustees v Downing* [1990] 19 E.G. 87).

“Any relevant requirement has not been complied with” (Acquisition of Land Act 1981 (c.67) s.23(2)(b)). Where a compulsory purchase order has been made there is a “relative requirement” within the meaning of this section that the decision maker should consider and important objection by the person aggrieved (*Bolton Metropolitan BC v Secretary of State for the Environment and Greater Manchester Waste Disposal Authority* (1990) 61 P. & C.R. 343). The words “any relevant requirement” in this

RELEVANT

section should not be construed as applying to procedural matters only (*Greenwich LBC v Secretary of State for the Environment*; *Yates v Secretary of State for the Environment*, *The Times*, March 2, 1993).

“The relevant date” (Wages Act 1986 (c.48) Sch.6 para.9) is the date of expiry of the statutory redundancy notice which the employers are required to give under s.49(1) of the Employment Protection (Consolidation) Act 1978 (c.44) (*Staffordshire CC v Secretary of State for Employment* [1981] I.C.R. 664).

“Other relevant information” (Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 (SI 1989/343) reg.9(1)). When determining counsel’s fees in the Crown Court the sum of the fees paid to the opposing party is “other relevant information” within reg.9(1) (*Lord Chancellor v Wright* [1993] 4 All E.R. 74).

“Unaware of any relevant fact”: see HOMELESS.

(Immigration Act 1971 (c.77) s.14.) Entry clearance could be the “relevant document” for the purposes of s.14(2A) so long as it related to the reason that the application (*R. v Secretary of State for the Home Department, Ex p. Ahmed (Ashfaque)* [1995] Imm.A.R. 590).

“Relevant locality”: see LOCALITY.

(Income and Corporation Taxes Act 1988 (c.1) ss.619(1) and 623(2).) “Relevant earnings . . . means . . . any income . . . chargeable to tax . . . immediately derived by him from the carrying on or exercise by him of his trade Income received by a tax-payer from syndicates at Lloyds where he was an external Name and where the trade of underwriting was undertaken by the syndicate’s agent was not derived by the taxpayer from the carrying on or exercise by him of his trade as an individual and so did not qualify him for relief from income tax (*Koenigsberger v Mellor* (1995) T.C. Leaflet No.3438).

“Relevant disposal”: see DISPOSAL.

“Relevant local government service”: see LOCAL GOVERNMENT SERVICE.

RELEVANT TO. See RELATED TO.

RELIABILITY. For a person to access a system by using information that indicated he was a person authorised to do so affects the system’s “reliability” contrary to ss.3 and 17(2) of the Computer Misuse Act 1990, since if a computer records information from one individual which actually emanates from another the reliability of the data is manifestly affected (*Zezev v Governor of Brixton Prison* [2002] 2 Cr.App.R. 33, Q.B.D.).

RELIABLE DEVICE. (Road Traffic Act 1972 (c.20) s.8(3)(b), as substituted by Sch.8 to the Transport Act 1981 (c.56).) These words are to be construed subjectively as meaning a device which the operator reasonably believes to be reliable (*Thompson v Thynne* [1986] R.T.R. 293). Spelling mistakes in the elements of a Lion Intoximeter do not make it an unreliable device (*Burditt v Rogers (Note)* [1986] R.T.R. 391). But an error in the date on the printout of a Lion Intoximeter was held to be sufficient basis for the constable to decide that the device was unreliable (*Slender v Boothby (Note)* [1986] R.T.R. 385).

RELIEF. “‘Relief’ and ‘relieve’ are appropriate terms to describe the remedial action of the court in cases where a penalty or forfeiture has been incurred, and which the court thinks it equitable that the complainant should not lie under or suffer” (per Davey L.J., *Nind v Nineteenth Century Building Society* [1894] 2 Q.B. 226); therefore, it was held in that case that a lessee was not “relieved”, under s.14 of the Conveyancing and Law of Property Act 1881 (c.41), or s.2(1) of the Conveyancing

and Law of Property Act 1892 (c.13), if he himself avoided a forfeiture by remedying his breaches of covenant and making the necessary compensation. See further LEASE; UNREASONABLY. See Law of Property Act 1925 (c.20) s.146.

Where relief against the forfeiture of a head lease has been granted under what is now s.146 of the Law of Property Act 1925 (c.20), a sub-lease, which by the forfeiture was extinguished, is revived, "for the word relief carries with it the meaning that the forfeiture is deemed not to have taken place at all" (per Darling J., *Dendy v Evans* [1910] 1 K.B. 263; *Fairclough v Berliner* [1930] W.N. 219). As to the grounds on which relief under that section will be refused, see *Rose v Hyman* [1911] 2 K.B. 234.

"Relief claimed": see *Litton v Litton*, 3 Ch. D. 793; *Pascoe v Richards*, 50 L.J. Ch. 337.

"Relief" (the old R.S.C. Ord.25 r.5, now Ord.15 r.16): see *Guaranty Trust Co of New York v Hannay* [1915] 2 K.B. 536.

"Relief sought" (County Courts Act 1959 (c.22) s.109(2)(a)(ii)) should be construed in the same manner as "damage claimed" in s.109(2)(a)(i), i.e. those claimed in the particulars of claim and not those sought during the proceedings or those actually awarded (*Connor v Maunder* [1972] 1 W.L.R. 914).

"Relief" included the exemption of the income of a charity applied for charitable purposes or the exemption of the income of an approved pension scheme from its investments as a relief from tax, which would otherwise have been payable (*Commissioners of Inland Revenue v Universities Superannuation Scheme Ltd* (1996) T.C. Leaflet No.3499).

A deduction to be disregarded from what would otherwise be profit in calculating tax is a relief. But an allowable loss may not be (*Taylor (HM Inspector of Taxes) v MEPC Holdings Ltd* [2004] 1 W.L.R. 82, HL).

"Relief and maintenance": Stat. Def., Merchant Shipping Act 1970 (c.36) s.97.

See ANY APPROPRIATE RELIEF.

RELIGION. "What is religion? Is it not what a man honestly believes in and approves of and thinks it his duty to inculcate on others, whether with regard to this world or the next? A belief in any system of retribution by an overruling power? It must, I think, include the principle of gratitude to an active power who can confer blessings" (per Willes J., *Baxter v Langley*, 38 L.J.M.C. 5); see *Re Manser* [1905] 1 Ch. 68.

"It seems to me that 'religion' and 'faith' are interchangeable words" (*Re Tarnpolsk, Barclays Bank v Hyer* [1958] 1 W.L.R. 1157).

To accuse a person of a change of religion has been held not to be defamation, for it does not hold him up to hatred and contempt (*Burns v Diamond*, 3 S.L.T. 256).

"Advancement of religion" (Rating and Valuation (Miscellaneous Provisions) Act 1955 (c.9) s.8(1)(a)): see *Berry v St. Marylebone BC* [1958] Ch. 406.

The essential elements of religion are belief in and worship of God. The Society, in seeking a declaration that its objects (the study and dissemination of ethical principles) were for the advancement of religion, claimed an extension of the meaning of religion to cover these principles, arguing that it need not be theist. It was held that such a definition was not acceptable as religion is concerned with man's relation to God, ethics with man's relation to man (*Re South Place Ethical Society; Barralet v Att-Gen* [1980] 3 All E.R. 918.)

"Direction for education to be in the Protestant religion": see EDUCATION.

Stat. Def., Equality Act 2010 s.10; Charities Act 2011 s.3.

“34. There has never been a universal legal definition of religion in English law, and experience across the common law world over many years has shown the pitfalls of attempting to attach a narrowly circumscribed meaning to the word. There are several reasons for this—the different contexts in which the issue may arise, the variety of world religions, developments of new religions and religious practices, and developments in the common understanding of the concept of religion due to cultural changes in society. While the historical origins of the legislation are relevant to understanding its purpose, the expression ‘place of meeting for religious worship’ in section 2 of PWRA has to be interpreted in accordance with contemporary understanding of religion and not by reference to the culture of 1855. It is no good considering whether the members of the legislature over 150 years ago would have considered Scientology to be a religion because it did not exist. . . .

51. Unless there is some compelling contextual reason for holding otherwise, religion should not be confined to religions which recognise a supreme deity. First and foremost, to do so would be a form of religious discrimination unacceptable in today’s society. It would exclude Buddhism, along with other faiths such as Jainism, Taoism, Theosophy and part of Hinduism. The evidence in the present case shows that, among others, Jains, Theosophists and Buddhists have registered places of worship in England. Lord Denning in *Segerdal* [1970] 2 QB 697, 707 acknowledged that Buddhist temples were ‘properly described as places of meeting for religious worship’ but he referred to them as ‘exceptional cases’ without offering any further explanation. The need to make an exception for Buddhism (which has also been applied to Jainism and Theosophy), and the absence of a satisfactory explanation for it, are powerful indications that there is something unsound in the supposed general rule. . . .

56. It might be argued that the expression ‘religious worship’ in s.2 of the 1855 Act shows that Parliament intended the word ‘religious’ to be given a narrow interpretation. I would reject that argument. The language of the section showed an intentionally broad sweep. It included ‘Protestant Dissenters or other Protestants’, ‘persons professing the Roman Catholic religion’, ‘persons professing the Jewish religion’ and ‘any other body or denomination of persons’. It may be that the members of the legislature in 1855 would not have had in mind adherence to other faiths such as Buddhism, but that is no ground for holding that they were intended to be excluded from legislation passed to remove religious discrimination. . . .

57. Of the various attempts made to describe the characteristics of religion, I find most helpful that of Wilson and Deane JJ. For the purposes of PWRA, I would describe religion in summary as a spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind’s place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system. By spiritual or non-secular I mean a belief system which goes beyond that which can be perceived by the senses or ascertained by the application of science. I prefer not to use the word ‘supernatural’ to express this element, because it is a loaded word which can carry a variety of connotations. Such a belief system may or may not involve belief in a supreme being, but it does involve a belief that there is more to be understood about mankind’s nature and relationship to the universe than can be gained from the senses or from science. I emphasise that this is intended to be a description and not a definitive formula.” (*Hodkin, R. (on the application of) v Registrar-General of Births, Deaths and Marriages* [2013] UKSC 77.)

See CHRISTIAN RELIGION; ENTERED IN RELIGION; MINISTER; SPIRITUAL; UNDUE INFLUENCE.

RELIGIOUS. A testamentary gift for “religious purposes”, or for “religious societies”, without naming them, is prima facie for a charitable purpose, and creates a good charity (*Baker v Sutton*, 5 L.J. Ch. 264; *Townsend v Carus*, 13 L.J. Ch. 169; *Re White* [1893] 2 Ch. 41; see further CONSERVATIVE). So, of the phrase “any other religious institution or purposes” (*Wilkinson v Lindgren*, 5 Ch. 570). *Secus*, where the society indicated is only for prayer and devotion by its own members (*Cocks v Manners*, L.R. 12 Eq. 574); for “there is, in truth, no ‘charity’ in attempting to improve one’s own mind, or save one’s own soul. Charity is, necessarily, altruistic, and involves the idea of aid or benefit to others” (per Farwell J., *Re Delany* [1902] 2 Ch. 642, cited SUCCESSORS).

“Religious purposes” mean “purposes conducive to the advancement of religion”, in the absence of a context enabling the words to be given a wider meaning (*Re Ward; Public Trustee v Ward* [1941] Ch. 308).

A bequest for “religious and benevolent societies or objects” is good, as that means societies or objects, which are primarily religious but are also benevolent (*Re Lloyd*, 10 T.L.R. 66); had the conjunction been “or” instead of “and”, the bequest would have been void (see OR); but Stirling J. did not read “or” for “and”, and if driven to that then he held (by an interpretation supplied by a codicil) that “benevolent” meant “charitable”. See hereon *Re Manser* [1905] 1 Ch. 68.

On the question whether bodies were formed for religious purposes and so are charities for the receipt of gifts, see *Oxford Group v Inland Revenue Commissioners* [1949] 2 All E.R. 537 (Oxford Group not a charity, but see Finance Act 1950 (c.15) s.37); *Gilmour v Coats* [1949] A.C. 427 (prayer by Carmelite nuns not of sufficient benefit to the public); *Re Banker’s Will Trusts*, 64 T.L.R. 273 (gift for “God’s work” charitable).

A fund created for the purpose of meeting the charges of an annual sermon is one for religious purposes: see *Re Avenon’s Charity* [1913] 2 Ch. 261.

“Religious denomination”, within the meaning of para.4 of Sch.I to the Military Service Act 1916 (c.104): see *Kick v Donne*, 33 T.L.R. 325. See also REGULAR MINISTER.

A clause in an endowed school scheme requiring that the rector for the time being of the parish should ex officio be a governor was not a provision “respecting the religious opinions of the governing body” within the concluding words of s.19 of the Endowed Schools Act 1869 (c.56) (*Re Hodgson’s School*, 3 App. Cas. 857).

“Premises exclusively appropriated to public religious worship” (Poor Rate Exemption Act 1833 (c.30) s.1): see *Rogers v Lewisham BC* [1951] 2 K.B. 768, cited PUBLIC RELIGIOUS WORSHIP.

“Religious worship” (Places of Worship Registration Act 1855 (c.81) s.2) involves submission to and veneration of a superhuman being, and the meetings and ceremonies of Scientologists did not constitute “religious worship” (*R. v Registrar General, Ex p. Segerdal* [1970] 2 Q.B. 697).

The “religious belief” (Trade Union and Labour Relations Act 1974 (c.52) Sch.1 para.6(5)(b)) of an employee which leads him to refuse to join a trade union may be his own personal belief, and does not necessarily have to be identified with the requirement of some religious body to which he might belong (*Saggers v British Railways Board* [1977] 1 W.L.R. 1090).

RELIGIOUS

“Place of religious worship”: see PLACE; USUAL PLACE OF RELIGIOUS WORSHIP.

See CHARITABLE PURPOSES; EDUCATION; PUBLIC RELIGIOUS WORSHIP; WORSHIP; SERVICE OF GOD.

RELIGIOUS DISCRIMINATION. Stat. Def., Equality Act 2006 s.45.

RELIGIOUS HATRED. Stat. Def., “hatred against a group of persons defined by reference to religious belief or lack of religious belief” (Public Order Act 1986 s.29A inserted by Racial and Religious Hatred Act 2006 Sch.).

RELIGIOUS OR POLITICAL HOSTILITY. Stat. Def., Justice and Security (Northern Ireland) Act 2007 s.1(7).

RELIGIOUS WORSHIP. See PLACE OF PUBLIC RELIGIOUS WORSHIP.

RELIGIOUSLY AGGRAVATED OFFENCE. See Pt 2 of the Crime and Disorder Act 1998 (c.37) as amended by s.39 of the Anti-terrorism, Crime and Security Act 2001 (c.24).

RELINQUISH. “Relinquish” is not a word of art, and may be satisfied by an abandonment, or non-claim (*Home v Booth*, 11 L.J.C.P. 78).

Property which a successor “shall be bound to relinquish, or be deprived of” (s.38 of the Succession Duty Act 1853 (c.51)): see *Le Marchant v Inland Revenue Commissioners*, 1 Ex. D. 185.

REM. An ACTION in rem is one in which the subject-matter is itself sought to be affected, and in which “the claimant is enabled to arrest the ship or other property, and to have it detained in the custody of officers of the law, until his claim has been adjudicated upon, or until security by bail has been given for the amount, or for the value of the property proceeded against, where that is less than the amount of the claim” (Carver (9th edn), 988). The action is peculiar to the courts of Admiralty, and affects generally a ship, or cargo, or freight. See hereon R.S.C. Ord.15; Carver; Wms. & Bruce; see further *The Optima*, 74 L.J.P.D. & A. 94. As to when persons who have advanced money for necessities for a foreign ship can sue “in rem”, see *The Mogileff* [1921] P. 236, affirmed [1922] W.N. 34.

“There is also an information in rem, when any goods are supposed to become the property of the Crown, and no man appears to claim them, or to dispute the title of the king. As antiently in the case of treasure-trove, wrecks, waifs, and estrays, seised by the king’s officer for his own use”; and inquiry thereupon made by information for the owner, and him failing the property to be declared to belong to the crown (3 Bl. Co 262).

“A judgment *in rem* I conceive to be an adjudication pronounced (as indeed its name denotes) upon the *status* of some particular subject-matter, by a tribunal having competent authority for that purpose. Such an adjudication (being a most solemn declaration from the proper and accredited quarter that the *status* of the thing adjudicated upon is as declared) concludes all persons from saying that the *status* of the thing adjudicated upon was not such as declared by the adjudication” (2 Sm. L.C. 1 ed. 439 (9th edn), 838); “a definition approved and left untouched by each of the numerous and distinguished editors” (per Danckwerts, arg. [1904] A.C. 33). The principal examples are judgments in actions in rem (see above); but there are many other matters of which the adjudication is a judgment in rem, and “concludes all persons”, e.g. proceedings before justices under the Private Street Works Act 1892 (c.57) (*Wakefield v Cooke* [1904] A.C. 31, explaining *R. v Hutchins*, 6 Q.B.D. 300); on the other hand, for an example of a judgment in personam, see *Att-Gen, Trinidad v*

Eriche [1893] A.C. 518. As to what is, and what is the effect of, a judgment in rem, see further 2 Sm. L.C. (13th edn). Cp. PERSONAM.

REMAIN. "Being out of England, remains out of England" (s.4(d) of the Bankruptcy Act 1883 (c.52)) did not include a person whose home was out of England (*Ex p. Crispin*, 8 Ch. 374; *Ex p. Brandon, Re Trench*, 25 Ch. D. 500). See Bankruptcy Act 1914 (c.59) s.1(d).

The power to appoint a new trustee where a trustee "remains out of the United Kingdom for more than 12 months" (s.36(1) of the Trustee Act 1925 (c.19)) does not apply to a trustee resident out of the United Kingdom but who, during the 12 months, visits England for about a week and who during such visit attends to the trust business (*Re Walker* [1901] 1 Ch. 259). Cp. ABROAD; ABSENT.

A bequest of what shall "remain" or "be left" at the decease of the prior legatee, or of what the legatee is possessed of at the time of death, or of "what he does not want", or "does not spend", or "can transfer", or "can save", or "of what remains undisposed of", or of the "bulk" of certain property, or a gift over of the whole legacy in case of the death of the prior legatee "intestate", is void for uncertainty (1 Jarm. (8th edn) 480, and cases there cited).

But where the will gives to A a limited interest with a power of disposal of the corpus, and this is followed by a gift over of what "remains", or is "remaining" at the death of A, or of what "remains undisposed of", or "does not spend", or other like expression, the gift over will take effect upon such of the property as A may not have disposed of by act inter vivos (*Re Pounder*, 56 L.J. Ch. 113; *Re Thomson*, 14 Ch. D. 263; *Re Stringer*, 6 Ch. D. 1). In *Re Pounder*, Kay J. said that "remaining" was equivalent to "remaining undisposed of".

Bequest of money which might "remain" (*Rogers v Thomas*, 2 Ke. 8; *Barrett v White*, 24 L.J. Ch. 724), or "whatever remains of my money" (*Dowson v Gaskoin*, 6 L.J. Ch. 295, cited MONEY), held to pass the residuary personal estate: see further *Re Maclean*, 11 T.L.R. 82. So, a bequest of "any money that may remain" passed a reversionary interest in a sum charged on realty (*Stocks v Barre*, 5 Jur. N.S. 537); and "any money not mentioned in the aforesaid bequests that may be in my POSSESSION at my death" passed a reversionary interest in personalty (*Re Egan* [1899] 1 Ch. 688).

Bequest to wife, absolute in the first instance, but followed by limitations which would cut down her estate to a life interest, is not saved from that cutting down by the limitations being prefaced by "whatever remains of my said estate and effects" (*Constable v Bull*, 18 L.J. Ch. 302). But a clear absolute gift is, on the other hand, not cut down by a gift over of, e.g. "any BALANCE remaining" (*Lloyd v Tweedy* [1898] 1 I.R. 5; see further *Monck v Croker* [1900] 1 I.R. 56).

Bequest of "what is left, my books and furniture and all other things, I wish to be equally divided amongst the three children"; held, to carry the RESIDUE (*Re Cadge* L.R. 1 P. & D. 543); so, of the phrase, "my furniture, plate, books, and livestock, or 'what else' I may be possessed of at my decease" (*Fleming v Burrows* 1 Russ. 276).

Bequest to wife of "household effects absolutely, and at my death wife to have power to see all property belonging to me, and at her death 'what is left' to be divided between my two daughters"; held, that "what is left" meant the net residue after payment of debts and costs of realisation, in which residue the wife did not take any life or other interest by implication (*Re Willatts* [1905] 1 Ch. 378; but see same case [1905] 2 Ch. 135).

“The first question for determination is whether the Secretary of State, by making deductions from the claimant’s ongoing benefit entitlement to recover overpayment or loan, is purporting to exercise a ‘remedy in respect of the debt’ within the meaning of s.251G(2)(a). It is accepted by the Secretary of State that the overpayment and loan are qualifying debts for the purposes of a debt relief order. ‘Remedy’ is not defined in the Insolvency Act 1986 definition section, 251X or 436. In my view, remedy should be given its ordinary meaning, the legal means to enforce or recover a right, and as such includes self-help measures such as set off, see Jowitt’s Dictionary of English Law, 2010, 3rd edn, 1964. The right to make deductions from ongoing benefit to secure repayment of an overpayment or social fund loan is accordingly a remedy within the normal meaning of the word. It is in effect the statutory equivalent of a right of set off. That ordinary meaning of remedy is supported by reference to s.251G(2)(b) which would be superfluous if remedy was confined to remedies which may be granted by a court. For the Secretary of State Mr Edwards tried to confine the meaning of ‘remedy’ in this way and made much play of the conjunction ‘and’ between subss. (2)(a) and (2)(b) in s.251G. In my view, that argument gets nowhere. If correct it would have the effect of rendering subs.(2)(a) largely otiose. Thus, in my view ‘remedy’ in s.251G(2)(a) covers the range of methods used by the Secretary of State for the recovery of overpayment and social fund loans, including deduction from ongoing benefit.” (*R. (on the application of Payne) v Secretary of State for Work and Pensions* [2010] EWHC 2162 (Admin).)

“In any ordinary use of language, the power to recover the debt by deduction from benefit is a ‘remedy in respect of the debt’. Moreover, if self-help remedies such as this were not included in the concept of a ‘remedy’, it is difficult to see why both s.251G(2)(b) and s.285(3)(b) specifically prohibit the use of court proceedings to enforce the debt. They would be otiose if the only remedies contemplated by the prohibition of any remedy were court proceedings. There is no sense in a scheme which prohibits recovery of the liability by one method but allows it by another.” (*Secretary of State for Work and Pensions v Payne* [2011] UKSC 60.)

REMISE. The usual form of words in a release—“remise, release, and quit claim”—are as old as Littleton; but the old, and true, form of “quit” was “quiet” (Litt. s.445; see further QUITCLAIM).

“*Remisise, relaxasse, et quietum clasmasse*’. Here Littleton sheweth that there be three proper words of release, and bee much of one effect; besides, there is *renunciare, acquietare*, and there bee many other words of release; as if the lessor grants to the lessee for life, that he shall be discharged of the rent, this is a good release. See Sect. 532” (Co. Litt. 264B; see further 291A).

See DEMAND.

REMIT. To “remit”, e.g. money realised by the sale of goods means to send off the money in the ordinary matter; a person whose duty is to “remit” money or documents, discharges that duty as soon as he has, in the ordinary course and manner of business, sent it or them off; he is not responsible for accidents in the transit (*Comber v Leyland* [1898] A.C. 524; see especially judgment of Lord Herschell). Cp. TRANSMIT; AT ONCE; PROCEEDS.

As to taxation of remittances, payable in the United Kingdom, of income arising from possessions outside the United Kingdom, see *Inland Revenue Commissioners v Gordon* [1952] 1 T.L.R. 913.

REMITTER. “Remitter is an antient terme in the law, and is where a man hath two titles to lands or tenements, namely one a more antient title, and another a more latter title; and if he come to the land by a latter title, yet the law will adjudge him in by force of the elder title, because the elder title is the more sure and more worthie title. And then when a man is adjudged in by force of his elder title, this is sayd a remitter in him” (Litt. s.659; see thereon Co. Litt. 347B, and Butler’s note, 299). See further *Termes de la Ley*; Cowel; Jacob; 3 Bl. Com. 19, 190; *Doe d. Daniell v Woodroffe*, 12 L.J. Ex. 147.

REMOTE. A remote cause is the antithesis of proximate cause.

Remote damages are those “remotely resulting from the act complained of” (Sedgwick on Damages, Ch.3). See also Beven, Bk. 1, Ch.3. See further *Dulieu v White* [1901] 2 K.B. 669, rejecting *Victorian Railway v Coultas* [1901] 2 K.B. 669, cited ACCIDENT, which last case was also questioned in *Wood v North British Railway*, 28 S.L.R. 130 at 921; *Searle v Lund*, 90 L.T. 529; *Sapwell v Bass* [1901] 2 K.B. 486; but see *Hambrook v Stokes* [1925] 1 K.B. 141; *Liesbosch Dredger v S.S. Edison* [1933] A.C. 449; *Yorkshire Dale Steamship Co v Minister of War Transport* [1942] A.C. 691; *Monarch SS Co Ltd v A/B Karlshamns Oljefabriker* [1949] A.C. 196. See DAMAGE.

“Remoter ancestor”; see *Knowles v Att-Gen* [1951] P. 54, cited ANCESTOR.

“Void for remoteness”: see PERPETUITY.

REMOTE COMMUNICATION. Stat. Def., Gambling Act 2005 (c.19) s.4.

REMOTE GAMBLING. Stat. Def., Gambling Act 2005 (c.19) s.4.

REMOVAL. In a proviso to a marine insurance, expenses “for removal of obstructions under statutory powers” include expenses of removal paid as damages, as well as expenses for which the assured becomes directly responsible (*The North Britain* [1894] P. 77; which was approved in House of Lords, *The Engineer* [1898] A.C. 382). As to expenses of harbour authority in raising wrecks, etc., see *The Emerald* [1896] P. 192. See further REMOVE.

“The removal or the retention of a child” (Child Abduction and Custody Act 1985 (c.60) Sch.1 art.3). For the purposes of this article the words “removal” and “retention” refer to mutually exclusive single events occurring on a specific occasion (*Re H. (Minors) (Abduction: Custody Rights)* [1991] 3 W.L.R. 68).

“So as to remove him from the lawful control of any person having lawful control” (Child Abduction Act 1984 (c.37) s.2 (1)(a)). These words do not contemplate the geographical removal of the child, but the removal of the control of the child from the parent, or other person having lawful control, to the accused (*R. v Leather, The Times*, January 21, 1993).

“Breakage during removal”: see BREAKAGE.

A reference to removal of a person from the country does not include a reference to voluntary return to the country of nationality (*A.A. v Home Secretary* [2006] EWCA Civ 401).

See FRAUDULENT REMOVAL.

REMOVE. To “remove” a thing is not to blow it to atoms; therefore, where a wreck in a harbour, or its approaches, had to be dispersed by explosives, the expense of such a removal as that could not be recovered under s.56 of the Harbours, Docks, and Piers Clauses Act 1847 (c.27) (per Lord Macnaghten, *Arrow Co v Tyne Commissioners* [1894] A.C. 508; see further *Barraclough v Brown* [1897] A.C. 615; but see *Smith v Wilson* [1896] A.C. 579).

REMUNERATED

To “remove” shell fish “from a fishery”, within Sea Fisheries (Shell Fish) Regulation Act 1894 (c.26), or a by-law thereunder, meant a sufficient taking up or severance of the fish for the purpose of taking it away (*Thomson v Burns* 66 L.J.Q.B. 176).

In a statute authorising the appointment and removal of officials, as meaning “remove at pleasure” see *McManus v Bowes* [1938] 1 K.B. 98.

“This review of the statutory materials shows in my judgment that the language of ‘remove’ and ‘required to leave’ are terms of art in the law of immigration. . . . Section 15(2) [of the Immigration and Asylum Act 1999] in particular tends to show, I think, that there terms are being used in what may be called an immigration sense.” (*Re S (Child Abduction: Asylum Appeal)* [2002] 1 W.L.R. 2548 at 2554 CA per Laws L.J.).

“Send out, deliver, remove, or receive” spirits: see SEND.

A power to remove a person includes a power to use reasonable force (*R. (W.) v Metropolitan Police Commissioner* [2006] EWCA Civ 458).

REMUNERATED. “Remunerated by shares in the profits or the gross earnings”, in s.7(2) of the Workmen’s Compensation Act 1906 (c.58): see *Stephenson v Rossall Steam Fishing Co*, 84 L.J.K.B. 677; *Burman v Zodiac Steam Fishing Co* [1914] 3 K.B. 1039; see also *Admiral Fishing Co v Robinson* [1910] 1 K.B. 540, cited SHARE; *Miller v Otilie (Owners)* [1944] K.B. 188.

REMUNERATION. “Remuneration” is a wider term than “salary”. “‘Remuneration’ means a *quid pro quo*. Whatever consideration a person gets for giving his services, seems to me a ‘remuneration’ for them. Consequently, if a person was in receipt of a payment or of a percentage, or any kind of payment which would not be an actual money payment, the amount he would receive annually in respect of this would be ‘remuneration’” (per Blackburn J., *R. v Postmaster-General*, 1 Q.B.D. 663 at 664). Cp. EMOLUMENT.

“Remunerative full-time work” (Supplementary Benefits Act 1976 (c.71) s.6) means work for which payment is made. It does not have to be economic or profitable (*Perrot v Supplementary Benefits Commission* [1980] 1 W.L.R. 1153). See also ENGAGED.

Income from shares settled on a trustee, on trusts under which he was to receive the income while he retained the management of the company in question, was “remuneration” within the meaning of s.525(1)(a) of the Income Tax Act 1952 (c.10), now s.530(1)(a) of the Income and Corporation Taxes Act 1970 (c.10) (*White v Franklin* [1965] 1 W.L.R. 492).

“Remuneration, loans or otherwise, for the benefit of” (Finance Act 1947 (c.35) s.36(1)). Payments made to a director of a company as royalties on the sale of an article patented by the director, were payments “applied . . . by way of remuneration . . . for the benefit” of the director within the meaning of this section (*IRC v Dunning (H.) & Co* [1960] 1 W.L.R. 1106).

“Remuneration” (Redundancy Payments Act 1965 (c.62) Sch.1 para.5(1); Contracts of Employment Act 1972 (c.53) Sch.2 para.3(2)) includes any commission earned in addition to the basic wage (*Weevsmy v Kings* (1977) I.C.R. 244).

(Estate Agents Act 1979 (c.38) s.18(2).) A discount of 18 per cent obtained by an estate agent on his client’s newspaper advertising was in effect a “remuneration” which the agent was required by this section to disclose to his client (*Solicitors’ Estate Agency (Glasgow) v MacIver* (1990) S.C.L.R. 595).

(Wages Act 1986 (c.48) s.16.) Sums payable by the employer only counted as remuneration for the purposes of the 1986 Act, so that amounts paid by employers to employees in respect of cheque and credit card tips constituted remuneration (*Nerva v RL&G Ltd* [1997] I.C.R. 11).

It is not the case that a payment can only properly be characterised as remuneration where a specific agreement exists as to the level or rate of remuneration, or if a formula is specified for determining a particular figure to be paid. Remuneration is essentially consideration for work done or to be done and can take various forms. Having regard to the evidence in the instant case, it was clear that the payments had been treated by those concerned as remuneration and that there had been potential tax consequences in relation to those payments (*Currencies Direct Ltd v Ellis* [2002] EWCA Civ 779).

It was not unreasonable for domestic courts to conclude that tips paid to waiters by the employer from cheque and credit card payments were part of the waiters' remuneration (*Nerva v United Kingdom* (2002) 13 B.H.R.C. 246, ECHR.)

Stat. Def., Companies Act 1948 (c.38) s.159(7); Finance Act 1966 (c.18) Sch.5 para.18(3); Finance (No.2) Act 1975 (c.45) s.38(8); Employment Protection (Consolidation) Act 1978 (c.44) s.123(4).

Stat. Def., in relation to company director, Water Industry Act 1991 (c.56) s.35A(10) as inserted by the Water Act 2003 (c.37) s.50.

"Secondly, the word 'remuneration' is a general word which is capable of referring to damages in lieu of commission. It seems to me that that is a natural way of referring to damages which are to be quantified by reference to a commission which would otherwise have been earned. The situation is familiar in many commercial contexts. A shipowner charges hire for putting his vessel at the disposal of a charterer. In certain circumstances true hire will not have been earned but damages in lieu of hire will have been incurred, and it might naturally be said earned, where the vessel is rendered 'off-hire' by reason of the charterer's breach. It would, it seems to me, be a perfectly reasonable use of language to refer to this as the remuneration due to the shipowner for carrying out his services as such. For that reason also I see no difficulty in the compendious phrase 'remuneration for carrying out estate agency work'. That is what remuneration is: it is a recompense for something done. But it does not have to be a contractual fee. Remuneration might be earned quantum meruit, rather than as a matter of a contractual fee. And in certain circumstances, where the contracting party has in breach of contract prevented the service provider from earning his fee, he will have to pay damages assessed by reference to that fee. This more general sense of remuneration is to my mind underlined in this context by the final phrase in the Schedule's definition of 'Sole Agency' in the words 'with a purchaser introduced by another agent during that period'. Since the primary responsibility of the agent, and the essential thing which earns it its commission is the introduction of a willing purchaser, the word 'remuneration' and even the phrase 'remuneration for carrying out estate agency work' is clearly being used in a wide or extended sense when it is also earned by someone else's work. Clearly it is the agreement to carry out the services of an estate agent, rather than any particular work itself, which entitles the agent to his 'remuneration'." (*The Great Estates Group Ltd v Digby* [2011] EWCA Civ 1120.)

"It was common ground that 'earnings' in Regulation 41 has the same meaning as in Regulation 35. Earnings thus encompass any remuneration or profit derived from employment including payment in lieu of remuneration. As a matter of ordinary

RENDER

language, then the payment was, for the reasons I have given, remuneration or profit derived from the employment or payment in lieu of such remuneration. We were referred by Mr Forsdick to *Hochstauser v Mayes* [1959] Ch D 22 where this court decided by a majority that a scheme to assist employees of a company when moving by covering losses on property transactions was subject to tax as a profit of the employment; Jenkins LJ in giving one of the majority judgments considered that it would not be a profit of the employment if the payment was made for a consideration other than services (see p.47 of the report). In my view, on this test, the payment was for a consideration that derived from Miss Minter's employment; it did not derive from her entering into a settlement agreement as distinct from her employment, as the settlement was a settlement of what should have been paid to her during her employment. It was therefore remuneration or a profit derived from her employment." (*Minter v Kingston Upon Hull City Council* [2011] EWCA Civ 1155.)

Stat. Def., "includes any benefit or facility" (Income Tax Act 2007 s.169(6)).

Stat. Def., including disbursements, Legal Aid, Sentencing and Punishment of Offenders Act 2012 s.42.

See also PAY.

RENDER. To "render" means "to yield, give again, or return" (Jacob). See further Cowel.

"Rendering" rent free of impositions amounts to a covenant (*Giles v Hooper*, Carth. 135); but see 2 Platt 87.

"Rendered legitimate" (Legitimacy Act 1926 (c.60) s.1(1)); see *C. v C.* [1947] 2 All E.R. 50.

See RESERVATION.

RENEW. To "renew" a bill or note does not necessarily import that a new or additional bill or note is to be given; such an instrument is "renewed" by the time for its payment being extended (*Russell v Phillips*, 14 Q.B. 892); but, generally, a bill or note "is renewed by another being taken in its place, the parties and the amount being the same, though perhaps in some cases the interest due on the first is added" (per Lindley L.J., *Barber v Mackrell*, 68 L.T. 29); the context, however, may show that the parties used "renew" in a merely colloquial sense (*Barber*).

The inclusion of the word "renew" in a lessee's covenant "to repair, amend, ... renew" the premises adds nothing to the obligation that would be imposed by a covenant "to repair" without the word "renew" (*Collins v Flynn* [1963] 2 All E.R. 1068).

See RENEWAL.

RENEWABLE ENERGY ZONE. Stat. Def., Marine and Coastal Access Act 2009 s.322.

RENEWABLE LEASE. See *Hughes v Twisden*, 55 L.J. Ch. 481. See further RENEWAL.

RENEWABLE SOURCES (IN RELATION TO ENERGY). Stat. Def., Sustainable Energy Act 2003 (c.30) s.7(5).

Stat. Def., "any of the following sources of energy—

- (a) wind;
- (b) solar heat;
- (c) water (including waves and tides);
- (d) geothermal sources; or
- (e) biomass" (Energy Act 2004 (c.20) s.132).

Stat. Def., “means sources of energy other than fossil fuel or nuclear fuel” (Climate Change and Sustainable Energy Act 2006 s.21(4)).

RENEWAL. For the purposes of the Licensing (Consolidation) Act 1910 (c.24) s.16, the renewal of a justices’ licence meant the grant of a justices’ licence at a general annual licensing meeting by way of renewal of a similar licence which was in force in respect of the premises at the date of the application: see *R. v Corfield*, 86 J.P. 216; *R. v Taylor* [1915] 2 K.B. 593.

As to the form (in a lease of licensed premises) of clauses for the protection of the licence and securing its renewal, see *Bryant v Hancock* [1898] 1 Q.B. 716, affirmed in House of Lords [1899] A.C. 442; *Mumford v Walker*, 71 L.J.K.B. 19, cited ASSIGNS; *Wilson v Twamley* [1904] 2 K.B. 105, cited PERMIT; *Atkin v Rose* [1923] W.N. 58.

“Renewal” (Public Health Acts Amendment Act 1890 (c.59) s.51) means renewal of the existing music and dancing licence (*Boyce v Keighley Licensing Justices*, Unreported July 21, 1977, Bradford Crown Court); such as the imposition of conditions in respect of its use (*Marsden v Birmingham Licensing Justices* [1975] 3 All E.R. 517).

The “renewal” of a lease warranted by a practice (s.110 of the Municipal Corporations Act 1882 (c.50), replacing s.95 of the Act of 1835 (c.76)) did not mean that periodically a new lease on new terms had been granted nor that each renewal had been on precisely the same terms as its predecessor, but “there must be such a species of uniformity as to show that, in point of fact, it is the same lease which was renewed” (per Romilly M.R., *Att-Gen v Yarmouth*, 21 Bea. 633). Cp. Local Government Act 1933 (c.51) s.172.

An agreement to grant a “renewed” lease or term, simpliciter, means the renewing, as from the expiry of the original term, of such term for a like period and (with one exception) on the like terms (per Lyndhurst C.B., *Price v Asheton*, 4 L.J. Ex. Eq. 3, adopted by Bruce J., *Lewis v Stephenson*, 67 L.J.Q.B. 296). The exception as to terms is that such renewed instrument will not, without clearly expressed words, include the agreement for renewal, the insertion of which would connote a perpetual renewal (per Bruce J., *Lewis v Stephenson*, citing *Iggulden v May*, 7 Ea. 237; *Hyde v Skinner*, 2 P. Wms. 196; *Baynham v Guy’s Hospital*, 3 Ves. 294). For an example of such clear words, see *Hare v Burges*, 27 L.J. Ch. 86; to the contrary, *Swinburne v Milburn*, 9 App. Cas. 844. See further AS OFTEN AS; FOR EVER; FROM TIME TO TIME. Therefore, an agreement for a term of three years, “with the option of renewal”, gives the tenant the right to call for a further agreement for three years and on the like terms (except the clause for renewal) as those contained in the first agreement; but he must exercise that option within a reasonable time before the expiration of the original term (*Lewis v Stephenson*, above). See *Austin v Newham* [1906] 2 K.B. 167, cited OPTION; *Mostyn v Fitzsimmons* [1903] 1 K.B. 354, cited COSTS OF LEASE. See further, SAME.

A covenant by an under-lessee with his sub-lessee to grant an “extension” of the latter’s term on the under-lessee obtaining a further term from the freeholder, is “not a covenant to renew” (per Farwell J., *Muller v Trafford* [1901] 1 Ch. 62).

A “renewal” of a contract of employment so as to be within ss.2(3), 3(2) and 56(1) of the Redundancy Payments Act 1965 (c.62) must be a renewal or extension upon the same terms as the old contract. A mere request to stay on for a short while is not such a renewal (*Kitching v Ward*, 3 K.I.R. 322).

Of a contract: Stat. Def., Employment Protection (Consolidation) Act 1978 (c.44) s.153.

RENOUNCE

See PERPETUAL INTEREST; RENEW; REPAIR. Cp. RE-ENGAGEMENT.

RENOUNCE. See RENUNCIATION.

RENOVATE. “The expense of renovating buildings, gas-holders, mains”, though perhaps ambiguous, probably means “renewals by way of repair, and not replacements involving the introduction of new heritable subjects” (per Lord Dundas, *Edinburgh Parish Council v Edinburgh Assessor*, 43 S.L.R. 442).

RENT. “Rents’ be in divers manners, that is rent service; rent charge, and rent secke” (Termes de la Ley). See further 3 Cru. Dig. Title 28.

Although the rendering of services could constitute “rent” at common law it apparently cannot do so for the purposes of the Rent Acts (*Barnes v Barnes* [1970] 2 Q.B. 657). But see para.(29) below.

It has been said that the primary meaning of “rent” is the sum certain, in gross, which a tenant pays his landlord for the right of occupying the demised premises (see C. Litt. 96A, 141B. 142A; Jacob; Elph.; WOODFALL). Thus an agreement to occupy part of premises on the terms of keeping the whole clean and paying the rates and taxes, was not an agreement to pay “rent”, e.g. within the Small Tenements Recovery Act 1838 (c.74) (*Re Richmond Justices*, 10 T.L.R. 68; cp. *Doe d. Edney v Benham*, 7 Q.B. 976, below). See CERTAIN RENT.

“The words ‘rent’ and ‘annual value’ are often used indiscriminately” (per Cleasby B., *Sheffield Waterworks Co v Bennett*, 41 L.J. Ex. 240). In that case a waterworks company were empowered to charge each house supplied, according to its “rent” per annum, which was held to mean the money payment made by the tenant, less tenant’s rates payable by the landlord (L.R. 7 Ex. 409; L.R. 8 Ex. 196; see ANNUAL RENT; ANNUAL VALUE; FULL ANNUAL VALUE).

Finance (1909–10) Act 1910 (c.8) s.20: included the consideration, whatever the consideration might be, for the granting of the right to win the minerals (*Inland Revenue Commissioners v Hatherton (Lord)* [1936] 2 K.B. 316).

Finance Act 1934 (c.32) s.21: included half-yearly acreage payments as liquidated damages in respect of compensation for subsidence (*Fitzwilliam’s (Earl) Collieries Co v Phillips* [1943] A.C. 570); included tonnage rents in respect of licence to extract gravel (*Mosley v George Wimpey & Co*, 173 L.T. 24); did not include royalties (*Guyther v Boslymon Quarries* [1950] 2 K.B. 59).

Housing Act 1936 (c.51) s.2(1): meant the actual contractual rent without any deduction in respect of rates or taxes which the landlord might have agreed to pay. It included rent payable under a weekly tenancy (*Rousou v Photi* [1940] 2 K.B. 379).

Finance Act 1938 (c.46) s.17(1): the strictly technical meaning of “rent” was used; so did not include payment under a collateral agreement containing no demise (*Associated London Properties v Williams* [1948] L.J.R. 287).

Where periodical payments in respect of a mine are spoken of, “the phrases ‘rent’ and ‘royalty’ are figurative; you pay ‘rent’ in one sense, it is true; but ‘rent’ generally has been understood to be a return from the soil, and not to be a consumption or taking away of the soil; whereas, of course, where the soil consists of coal, or other minerals, you are actually taking it away” (per Halsbury C., *Greville-Nugent v Mackenzie* [1900] A.C. 83). But, generally speaking, royalties are rent (*Greville-Nugent v Macenzie*, above, see also RENTS AND PROFITS).

“Normal agricultural rent” (Housing (Rural Workers) Act 1926 (c.56) s.3(1)(b), as amended by Housing (Rural Workers) Amendment Act 1938 (c.35) s.4) was referable

to a particular point of time and did not denote variability according to changes in the relevant economic circumstances (*Black Mill v Straker* [1949] 2 All E.R. 919).

“Rent balance”: see *Edwards v Bagster*, 2 M. & W. 221.

“Rent due”: see DUE. Bequest of “all rent and arrears of rent due on the said property”; held, to include an apportioned part of the gale accruing at the testator’s death (*Searly v Stawell*, I.R. 2 Eq. 326).

“In cases when rent is payable not in money, but in kind, as in goods or services, then, if the parties have by agreement quantified the value in terms of money, the sum so quantified is the rent of the house within the meaning of the Rent Restriction Acts” (per Denning L.J., *Montagu v Browning* [1954] 1 W.L.R. 1039). This case was distinguished in *Barnes v Barratt* [1970] 2 Q.B. 657 where, without any qualification as to money value, it was held that the rendering of services cannot constitute rent for the purposes of these Acts.

“Rent payable for any statutory period” (Rent Act 1968 (c.23) s.22(2)(b)) refers to the rate at which rent is payable for the relevant period, and not a single indivisible sum payable on a specific date (*Avenue Properties v Ainsinon* [1976] 2 W.L.R. 740).

“Rent at which a hereditament might reasonably be expected to let” (Rating and Valuation Act 1925 (c.90) s.68(1)): see *Robinson Brothers (Brewers) Ltd v Durham County Assessment Committee* [1938] A.C. 321 (licensed premises). As to whether premises are let within s.23(1) see *Helman v Horsham and Worthing Assessment Committee* [1949] 2 K.B. 335.

An occupier’s right to have payments of rates reimbursed to him by the tenant does not made the reimbursements part of the rent (*Phillips v Long*, 63 T.L.R. 127).

“Rent payable under a lease” (Income Tax Act 1952 (c.10) s.175(1)). Royalties paid by a lessee in respect of sand and gravel extracted under a licence were held to be taxable as “rent” under this section, notwithstanding that, as the licence did not give the owners a right of re-entry for non-payment of the royalty, there was no right to distrain for arrears (*T&E Homes v Robinson* [1979] 2 All E.R. 522).

“Rent payable” (Leasehold Reform Act 1967 (c.88) s.27(5)) did not include arrears of rent which had become statute barred under the Limitations Act 1939 (c.21) s.17 (*Re Howell’s Application* [1972] Ch. 509).

The words “rent reserved” in the Royal Institute of Chartered Surveyors Scale mean the rent agreed between the parties at the time of the demise, and this is not affected by the fact that the actual rent payable is temporarily restricted to a lower figure by counter-inflation legislation (*Brecker Grossmith & Co v Canworth Group* [1974] 3 All E.R. 561).

Unless there is an express agreement to the contrary the payment of household bills does not constitute the payment of “rent” for the purposes of the Rent Acts (*Bostock v Bryant* [1990] 39 E.G. 64).

(Housing Benefit (General) Regulations 1987 (SI 1987/1971) regs 10(1), 11(2)(c).) “Rent” should be construed widely to include any service charges of other payments expressly mentioned in reg.10(1) (*R. v East Yorkshire Borough of Beverley Housing Benefits Review Board, Ex p. Hare*, *The Times*, February 28, 1995).

“Rent”, under the Supreme Court Act 1981 (c.54) s.38 and the County Courts Act 1984 (c.28) s.138, was a periodical sum paid in return for the occupation of land, issuing out of the land where a distress would be levied for non-payment (*Escalus Properties Ltd v Robinson* [1995] 3 W.L.R. 525).

RENT

“All the rent in arrear” in s.138(2) and (3) of the County Courts Act 1984 referred to rent in arrears at the date of issue of proceedings and rent claimed as means profits on the date of a court order (*Maryland Estates Ltd v Bar-Joseph* [1998] 3 All E.R. 193).

Stat. Def., Landlord and Tenant Act 1985 (c.70) s.31.

Term relating to rent: see TERMS.

“Rent in arrear”: see DISTRESS; IN ARREAR.

“Rent of assize”: see QUIT RENT.

“At the rent of so much per annum”: see RATE.

“Chief rent”: see CHIEF.

“Clear yearly rent”: see CLEAR.

“Improved rent”: see IMPROVE.

As to deductions from rent, see PAYABLE.

Stat. Def., Finance Act 1964 (c.49) s.19(12); General Rate Act 1967 (c.9) s.61(3); Leasehold Reform Act 1967 (c.88) s.4(1)(b); Rent Act 1968 (c.23) s.84(3); Income and Corporation Taxes Act 1970 (c.10) ss.71(2), 156(3), 491(12)(c); Finance Act 1972 (c.41) s.69(4); Housing Rents and Subsidies Act 1975 (c.6) s.11; Rent Act 1977 (c.42) ss.42(2), 85(3); Limitation Act 1980 (c.58) s.38.

Stat. Def., Tribunals, Courts and Enforcement Act 2007 s.76.

See ACTUALLY PAID; ANCIENT RENT; BEST RENT; CLEAR; CUSTOMARY RENT; FAIR RENT; FREE YEARLY; GROSS; GROUND RENT; MOST RENT; NET; NET RENT PAYABLE; PAYMENT OF RENT; PEPPERCORN; QUIT RENT; RACK RENT; RENT CHARGE; RENT SECK; RENTAL; RENTS.

RENT CHARGE. “Any annual or other periodic sum charged on or issuing out of land except rent reserved by a lease or tenancy or any sum payable by way of interest” (Rentcharges Act 1977 (c.30) s.1).

The creation of rentcharges is now prohibited (1977 Act s.2(1)) except by virtue of the Settled Land Act 1925 (c.18) s.1(1)(v); and rentcharges are extinguished after 60 years from the 1977 Act or the date when the rentcharge first became payable, whichever is the later.

See GROUND RENT; RENT; TITHE RENTCHARGE.

RENT FREE. A testamentary direction “to allow A during his life to reside rent free” in a specific dwelling-house, is not the same thing as a gift of the house to A for life with a condition that he shall live and reside, or reside, there; such a direction does not make A a tenant for life, he is only entitled to reside in the house if he likes and is not entitled to let it (*Re Varley*, 62 L.J. Ch. 652); but this is practically overruled by *Re Llanover* [1926] Ch. 626, cited PERMIT.

RENT OR PREMIUM. Under s.2 of the Finance Act 1912 (c.8): see *King v Cadogan (Earl of)* [1915] 3 K.B. 485.

RENT SECK. A “rent secke *idem est quod redditus siccus*; for that no distress is incident unto it” (Litt. s.218); but see s.5 of the Landlord and Tenant Act 1730 (c.28). See s.233, Litt., and *Cundiff v Fitzsimmons* [1911] 1 K.B. 513, cited TERRE TENANT, as to the remedy for its recovery.

See RENT; RENT CHARGE.

RENT SERVICE. See RENT.

RENTAL. “Annual rental of the settled land” (s.13(iv) of the Settled Land Act 1890 (c.69), now Sch.3 Pt 1 to the Settled Land Act 1925 (c.18)) means the total amount of the rents payable by the tenants as appearing in the estate rent book, with the modification that if any part of the land is temporarily vacant, it may be treated, for the

purpose of applying the subsection as producing the rent which a tenant occupying it usually pays: see *Windham's Settled Estate* [1912] 2 Ch. 75. But *Windham's Settled Estate* was not adopted in *Fife's Settlement Trusts* [1922] 2 Ch. 348, in which it was held that in ascertaining the value of the annual rental, income tax and super-tax payable on lands and investments subject to the settlement ought not to be deducted. It was further held that in estimating the amount of annual rental, no deductions can be made for mortgage interest, tithes, land tax, drainage rates or rent charges, though property tax may be deducted.

However, it includes interest of capital money (*Re De Teissier* [1893] 1 Ch. 153). See hereon *Re Walker* [1894] 1 Ch. 189, cited REBUILDING.

See GROSS; NET; RENT; ANNUAL RENT.

RENTS. "The primary meaning of 'rents' is rents accruing from year to year" (per Stirling J., *Re Green*, 40 Ch. D. 615). See further *Re Mackenzie*, 37 S.L.R. 254, cited RENTS AND PROFITS.

"The use of the word 'rents' may in some cases show that the testator intended leaseholds to be enjoyed in specie", and so displace the rule in *Howe v Dartmouth*, 7 Ves. 137 (Watson Eq. 121, cited *Cafe v Bent*, 5 Hare 36; cp. *Pickup v Atkinson*, 15 L.J. 213; *Skirving v Williams*, 24 Bea. 275; *Blunn v Bell*, 21 L.J. Ch. 811; *Vachell v Roberts*, 32 Bea. 140). But where the devise includes "both freeholds and leaseholds, the use of the word 'rents' is not a sufficient indication that the leaseholds should be enjoyed *in specie*, inasmuch as the word may be perfectly well satisfied by being attributed to the freeholds" (per Stirling J., *Re Game* [1897] 1 Ch. 881, following *Harris v Poyner*, 21 L.J. Ch. 915, and *Craig v Wheeler*, 29 L.J. Ch. 374; and rejecting *Crowe v Crisford*, 17 Bea. 507, *Wearing v Wearing*, 23 Bea. 99, and *Vachell v Roberts*, above). In *Pickup v Atkinson* (above), Wigram V.C. held that "rents" was not so sufficient, even where there are no freeholds to which the word could apply. Cp. RENTS AND PROFITS. See SPECIE. *Re Game* (above) was followed in *Re Wareham* [1912] 2 Ch. 312. See Law of Property Act 1925 (c.20) s.28.

The reservation to the lord of the manor of "rents", etc. in an inclosure Act: held, insufficient to give him the mines under the allotments (*Townley v Gibson*, 2 T.R. 701).

"Rents" (s.2 of the Apportionment Act 1870 (c.35)): see *Ellis v Rowbotham* [1900] 1 Q.B. 740, cited PERIODICAL.

"Rents and charges", in a mortgage of a wharf: see *Anderson v Butler's Co* [1879] W.N. 163.

"Net rents": see *Re Peck's Settlement* [1921] 2 Ch. 237, distinguished in *Re Gordon's Settlement* [1924] 1 Ch. 147.

Stat. Def., Corn Rents Act 1963 (c.14) s.1(3).

See ANNUAL PROCEEDS; RENT.

RENTS AND PROFITS. When, under a contract for the sale of realty, the purchaser is to be entitled to all the rents and profits from the day appointed for COMPLETION, which time is delayed considerably, during which delay the vendor simply remains in possession without arrangement as to rent, the purchaser is nevertheless entitled to a fair occupation rent under the words "all rents and profits" (*Metropolitan Railway v Defries*, 2 Q.B.D. 189, 387). "Rents and profits", in such a contract, "mean ordinary rents and profits, and not merely nominal rents and profits reserved upon leases for lives" (per Turner L.J., *Hughes v Jones*, 31 L.J. Ch. 88), and, accordingly, it was held that a vendor of a fee simple did not fulfil his agreement to let

RENT

“All the rent in arrear” in s.138(2) and (3) of the County Courts Act 1984 referred to rent in arrears at the date of issue of proceedings and rent claimed as means profits on the date of a court order (*Maryland Estates Ltd v Bar-Joseph* [1998] 3 All E.R. 193).

Stat. Def., Landlord and Tenant Act 1985 (c.70) s.31.

Term relating to rent: see TERMS.

“Rent in arrear”: see DISTRESS; IN ARREAR.

“Rent of assize”: see QUIT RENT.

“At the rent of so much per annum”: see RATE.

“Chief rent”: see CHIEF.

“Clear yearly rent”: see CLEAR.

“Improved rent”: see IMPROVE.

As to deductions from rent, see PAYABLE.

Stat. Def., Finance Act 1964 (c.49) s.19(12); General Rate Act 1967 (c.9) s.61(3); Leasehold Reform Act 1967 (c.88) s.4(1)(b); Rent Act 1968 (c.23) s.84(3); Income and Corporation Taxes Act 1970 (c.10) ss.71(2), 156(3), 491(12)(c); Finance Act 1972 (c.41) s.69(4); Housing Rents and Subsidies Act 1975 (c.6) s.11; Rent Act 1977 (c.42) ss.42(2), 85(3); Limitation Act 1980 (c.58) s.38.

Stat. Def., Tribunals, Courts and Enforcement Act 2007 s.76.

See ACTUALLY PAID; ANCIENT RENT; BEST RENT; CLEAR; CUSTOMARY RENT; FAIR RENT; FREE YEARLY; GROSS; GROUND RENT; MOST RENT; NET; NET RENT PAYABLE; PAYMENT OF RENT; PEPPERCORN; QUIT RENT; RACK RENT; RENT CHARGE; RENT SECK; RENTAL; RENTS.

RENT CHARGE. “Any annual or other periodic sum charged on or issuing out of land except rent reserved by a lease or tenancy or any sum payable by way of interest” (Rentcharges Act 1977 (c.30) s.1).

The creation of rentcharges is now prohibited (1977 Act s.2(1)) except by virtue of the Settled Land Act 1925 (c.18) s.1(1)(v); and rentcharges are extinguished after 60 years from the 1977 Act or the date when the rentcharge first became payable, whichever is the later.

See GROUND RENT; RENT; TITHE RENTCHARGE.

RENT FREE. A testamentary direction “to allow A during his life to reside rent free” in a specific dwelling-house, is not the same thing as a gift of the house to A for life with a condition that he shall live and reside, or reside, there; such a direction does not make A a tenant for life, he is only entitled to reside in the house if he likes and is not entitled to let it (*Re Varley*, 62 L.J. Ch. 652); but this is practically overruled by *Re Llanover* [1926] Ch. 626, cited PERMIT.

RENT OR PREMIUM. Under s.2 of the Finance Act 1912 (c.8): see *King v Cadogan (Earl of)* [1915] 3 K.B. 485.

RENT SECK. A “rent secke *idem est quod redditus siccus*; for that no distress is incident unto it” (Litt. s.218); but see s.5 of the Landlord and Tenant Act 1730 (c.28). See s.233, Litt., and *Cundiff v Fitzsimmons* [1911] 1 K.B. 513, cited TERRE TENANT, as to the remedy for its recovery.

See RENT; RENT CHARGE.

RENT SERVICE. See RENT.

RENTAL. “Annual rental of the settled land” (s.13(iv) of the Settled Land Act 1890 (c.69), now Sch.3 Pt 1 to the Settled Land Act 1925 (c.18)) means the total amount of the rents payable by the tenants as appearing in the estate rent book, with the modification that if any part of the land is temporarily vacant, it may be treated, for the

purpose of applying the subsection as producing the rent which a tenant occupying it usually pays: see *Windham's Settled Estate* [1912] 2 Ch. 75. But *Windham's Settled Estate* was not adopted in *Fife's Settlement Trusts* [1922] 2 Ch. 348, in which it was held that in ascertaining the value of the annual rental, income tax and super-tax payable on lands and investments subject to the settlement ought not to be deducted. It was further held that in estimating the amount of annual rental, no deductions can be made for mortgage interest, tithes, land tax, drainage rates or rent charges, though property tax may be deducted.

However, it includes interest of capital money (*Re De Teissier* [1893] 1 Ch. 153). See hereon *Re Walker* [1894] 1 Ch. 189, cited REBUILDING.

See GROSS; NET; RENT; ANNUAL RENT.

RENTS. "The primary meaning of 'rents' is rents accruing from year to year" (per Stirling J., *Re Green*, 40 Ch. D. 615). See further *Re Mackenzie*, 37 S.L.R. 254, cited RENTS AND PROFITS.

"The use of the word 'rents' may in some cases show that the testator intended leaseholds to be enjoyed in specie", and so displace the rule in *Howe v Dartmouth*, 7 Ves. 137 (Watson Eq. 121, cited *Cafe v Bent*, 5 Hare 36; cp. *Pickup v Atkinson*, 15 L.J. 213; *Skirving v Williams*, 24 Bea. 275; *Blunn v Bell*, 21 L.J. Ch. 811; *Vachell v Roberts*, 32 Bea. 140). But where the devise includes "both freeholds and leaseholds, the use of the word 'rents' is not a sufficient indication that the leaseholds should be enjoyed in specie, inasmuch as the word may be perfectly well satisfied by being attributed to the freeholds" (per Stirling J., *Re Game* [1897] 1 Ch. 881, following *Harris v Poyner*, 21 L.J. Ch. 915, and *Craig v Wheeler*, 29 L.J. Ch. 374; and rejecting *Crowe v Crisford*, 17 Bea. 507, *Wearing v Wearing*, 23 Bea. 99, and *Vachell v Roberts*, above). In *Pickup v Atkinson* (above), Wigram V.C. held that "rents" was not so sufficient, even where there are no freeholds to which the word could apply. Cp. RENTS AND PROFITS. See SPECIE. *Re Game* (above) was followed in *Re Wareham* [1912] 2 Ch. 312. See Law of Property Act 1925 (c.20) s.28.

The reservation to the lord of the manor of "rents", etc. in an inclosure Act: held, insufficient to give him the mines under the allotments (*Townley v Gibson*, 2 T.R. 701).

"Rents" (s.2 of the Apportionment Act 1870 (c.35)): see *Ellis v Rowbotham* [1900] 1 Q.B. 740, cited PERIODICAL.

"Rents and charges", in a mortgage of a wharf: see *Anderson v Butler's Co* [1879] W.N. 163.

"Net rents": see *Re Peck's Settlement* [1921] 2 Ch. 237, distinguished in *Re Gordon's Settlement* [1924] 1 Ch. 147.

Stat. Def., Corn Rents Act 1963 (c.14) s.1(3).

See ANNUAL PROCEEDS; RENT.

RENTS AND PROFITS. When, under a contract for the sale of realty, the purchaser is to be entitled to all the rents and profits from the day appointed for COMPLETION, which time is delayed considerably, during which delay the vendor simply remains in possession without arrangement as to rent, the purchaser is nevertheless entitled to a fair occupation rent under the words "all rents and profits" (*Metropolitan Railway v Defries*, 2 Q.B.D. 189, 387). "Rents and profits", in such a contract, "mean ordinary rents and profits, and not merely nominal rents and profits reserved upon leases for lives" (per Turner L.J., *Hughes v Jones*, 31 L.J. Ch. 88), and, accordingly, it was held that a vendor of a fee simple did not fulfil his agreement to let

RENUNCIATION

his purchaser "in to the receipt of the rents and profits" by handing over the rents proceeding from leases for lives which were less than the ordinary rents: see further Dart on Vendors and Purchasers. So, "rents and profits" of lands which comprise a quarry, include royalties in respect of stone got from the quarry (*Leppington v Freeman*, 65 L.T. 145).

"Rents, issues, and profits" of real estate are, of themselves, sufficient to include the proceeds of sale of a next presentation (per Turner L.J., *Cust v Middleton*, 34 L.J. Ch. 185).

So, as between tenant for life and remainderman, where the former is to have the "rents and profits", e.g. until sale, he will be entitled to the royalties on the workings of mines or quarries (*Greville-Nugent v Mackenzie* [1900] A.C. 83).

A rector who was enjoying, or had enjoyed, the right to fees for burials in a churchyard (although the freehold of the churchyard was not in him and the churchyard had long been disused for burials), was the person entitled to the "rents and profits" of the churchyard, under s.70 of the Lands Clauses Consolidation Act 1845 (c.18) (*Ex p. Rector of Liverpool*, L.R. 11 Eq. 15; *Ex p. Rector of St. Martin's, Birmingham*, L.R. 11 Eq. 23). See further *St. John the Baptist, Cardiff (Vicar of) v Parishioners of the Same* [1898] P. 158.

RENUNCIATION. The renunciation of a bill of exchange or promissory note which discharges it must be in writing, unless it be delivered up to the acceptor or maker (s.62(1) of the Bills of Exchange Act 1882 (c.61)); there, "acceptor", or "maker", includes his legal personal representatives, but not his legatee or devisee (*Edwards v Walters* [1896] 2 Ch. 157); the renunciation must absolutely and unconditionally renounce the rights on the bill or note (*Re George*, 44 Ch. D. 627, cited ON DEMAND).

There is no conveyancing instrument known to English law as a "renunciation", in the sense in which that word is used in the schedule to the Stamp Act 1891 (c.39); in that Act there is a "renunciation" upon a letter of allotment dealt with by the Schedule, and there is a renunciation of probate by a nominated executor which is not within the Schedule. "In the law of Scotland, however, the term is well known and applied in at least three classes of cases: (1) renunciation by an heir, which is similar to, but not the same as, a renunciation by an executor in England; (2) renunciation by a lessee of his lease, which is equivalent to the English SURRENDER; (3) renunciation by a mortgagee or incumbrancer of certain heritable rights which he has acquired by way of mortgage, or hypothecation, or pledge, and in that sense Bell's Law Dictionary and Paterson's Compendium treat it as a translation of the English terms 'reconveyance' or 'release'. In this last sense it appears to be used in the Schedule (to the Stamp Act) not only under this title of 'release', but also under the titles 'mortgage' and 'reconveyance'. As used in that Schedule, 'renunciation' may, I think, be regarded as the Scotch equivalent for the English 'reconveyance' or 'release'" (per Phillimore J., *Great Northern Railway v Inland Revenue Commissioners* [1899] 2 Q.B. 661). See RECONVEYANCE; RELEASE. See further *Firth v Inland Revenue Commissioners* [1904] 2 K.B. 207, cited DISCHARGE.

"Should [they] refuse this bequest at the time of my death or renounce it at any future date" did not connote a refusal or renunciation either at the testator's death or within a reasonable time thereafter (*Re Spensley's Will Trusts* [1954] Ch. 233).

Renunciation of a contract: see REVOKE.

Renunciation by an executor: see RETRACT.

Cp. RESIGNATION; ABJURATION.

See ANTICIPATORY BREACH OF CONTRACTS.

REORGANISATION. “Reorganisation of a company’s share capital” (Finance Act 1965 (c.25) Sch.7 para.4). The increase in a company’s share capital followed by the allotment of the new shares to its parent company for cash constituted a “reorganisation” of the company’s share capital within the meaning of this paragraph (*Dunstan v Young, Austen and Young* [1989] S.T.C. 8).

A scheme of arrangement approved by the court under s.206 of the Companies Act 1948 which reduced a company’s share capital by canceling its entire preference shareholdings was not a reorganisation within the meaning of s.126(1) of the Taxation of Chargeable Gains Act 1992 (*Unilever (UK) Holdings Ltd v Smith (Inspector of Taxes)*, T.L.R., January 22, 2003, CA).

Stat. Def., Capital Gains Tax Act 1979 (c.14) s.78.

REPAID. “Expense shall be repaid”, may create an obligation: see judgments of Herschell C. and Lord Macnaghten, *Arrow Co v Tyne Commissioners* [1894] A.C. 508. See further OWNER.

The burial board or churchwardens have to maintain and repair a closed churchyard or burial-ground, “and the costs and expenses shall be repaid” out of the poor rate “upon the certificate of the burial board or churchwardens” (Burial Act 1855 (c.128) s.18). “It is contended that ‘repaid’ implies a condition precedent, and that before any one can be ‘repaid’ he must have paid something himself. No doubt this is so. But in practice the reasonable construction of ‘repaid’ may, in such a case as this and under such a statute, well include payment of a sum for which a churchwarden has, by the authority of a vestry, himself become liable. I am of opinion that this is the reasonable construction, and that we are justified in holding, under the circumstances, that ‘repaid’ may include money for which a churchwarden has rendered himself liable, although he has not advanced the amount out of his own pocket” (per Pollock B., *R. v St. Mary, Islington*, 25 Q.B.D. 523); “costs and expenses”, in that connection, “are not only costs and expenses ‘extended’ but ‘to be expended’” (per Smith J., *R. v St. Mary*).

REPAIR. A covenant to “repair” does not impose on the lessee an obligation to do work to eliminate an inherent defect (*Collins v Flynn* [1963] 2 All E.R. 1068).

What constitutes “repair” within the meaning of a repairing covenant is a question of degree in each case having regard to the state of the particular building at the time of the lease and the terms of the lease itself, and a tenant’s covenant to “repair” did not extend to the work necessary to be done to a tilting flank wall (*Brew Brothers v Snax (Ross)* [1970] 1 Q.B. 612).

It is a question of degree as to whether that which a tenant should undertake, or pay for, under a covenant to repair is “repair”, or whether completion of the work would result in giving back to the landlord something wholly different from that which was demised. On that basis it was held that the removal of the stone cladding from a reinforced concrete building because the different rates of expansion were causing bowing, and replacing it with the addition of expansion joints, was a “repair” (*Ravenseft Properties v Davstone (Holdings)* [1979] 1 All E.R. 929).

Unshackling the cable of a vessel (in dry dock for repair) with the view to turn the cable end for end, was a work of “repair”, within s.7 of the Workmen’s Compensation Act 1897 (c.37) (*Cayzer v Dickson*, 42 S.L.R. 591); “I see no reason to limit the meaning of ‘repair’ to the supply or mending of something broken” (per Dunedin L.P.,

REPAIR

Cayzer). "Repair" contrasted with "alteration": see *London CC v London, Brighton & South Coast Railway* [1906] 2 K.B. 72, cited ALTERATION. See as to "substantial repair", *Brown v Trumper*, 26 Bea. 11.

Compulsory drainage, which under Public Health Act 1875 (c.55), was chargeable to trustees as owners, was not "repair" to be borne by a tenant for life under a clause directing him to keep the premises in repair (*Re Barney* [1894] 3 Ch. 562). Cp. now Settled Land Act 1925 (c.18) s.88.

"Repairing" (Prevention of Accidents Rules 1902 r.9) means making good remediable defects (*London & North Eastern Railway Co v Berriman* [1946] A.C. 278). The word must be given its natural meaning, and will therefore include tightening cross-bolts (*Reilly v British Transport Commission* [1957] 1 W.L.R. 76; [1956] 3 All E.R. 857), and the tightening of fish plates (*Cade v British Transport Commission* [1959] A.C. 256).

Semble "repair" in Coal Mines Act 1911 (c.50) can be properly applied to the making secure of the roof and sides of a working place but, *quaere*, whether it can be properly applied to the extension of a travelling road (*Walsh v National Coal Board* [1956] 1 Q.B. 511).

"Repair or maintenance" (Factories Act 1961 (c.34) s.176(1)) includes the doing of replacement work to a building or to equipment which is an essential part of a building (*Morter v Electrical Installations*, 6 K.I.R. 130).

"Repair or maintenance" (Building (Safety, Health and Welfare) Regulations 1948 (No.1145) reg.2(1)). Taking particulars of what guttering might need replacing was not an operation of "repair or maintenance" within the meaning of this regulation (*Sumner v R. L. Priestly* [1955] 1 W.L.R. 1202).

"Work of repair" (Shipbuilding Regulations 1931 (No.133) reg.11(b)) includes painting a ship in dry-dock with anti-fouling paint (*Day v Harland and Wolff* [1953] 1 W.L.R. 906; *Hurley v J Sanders & Co* [1955] 1 W.L.R. 470).

"Repairs of premises" (Income and Corporation Taxes Act 1970 (c.10) s.130(d)). The demolition of a spectators' stand at a football stadium which became unsafe, and its replacement by a new one, were not "repairs" within the meaning of this section (*Brown v Burnley Football and Athletic Co* [1980] 3 All E.R. 244).

"Repair or maintenance" (Finance Act 1972 (c.41) Sch.4 Group 8 item 2 fn.(1)). Where builders working on buildings damaged by subsidence found that the problem could not be cured merely by replacing the original foundations, and, in the interests of safety and to comply with building regulations, had to add additional foundations, this work was held to be more than mere "repair or maintenance" and not assessable to VAT (*ACT Construction Co v Customs and Excise Commissioners* [1981] 1 W.L.R. 1542). The replacement of roofing, albeit using different materials, was held to be a work of "repair or maintenance" for the purposes of this Schedule (*Commissioners of Customs and Excise v Sutton Housing Trust* [1983] S.T.C. 399). See also *Sharman v Customs and Excise Commissioners* [1983] S.T.C. 809, where the court gave guidance as to the correct approach to be adopted when deciding whether supplies of services were made in the course of "construction", "alteration", "repair or maintenance" of a building for the purposes of Group 8 of Sch.4 of the 1972 Act.

"Keep in repair" (Housing Act 1961 (c.65) s.32(1), now Landlord and Tenant Act 1985 (c.70) s.11). The landlord's statutory duty to keep the premises in "repair" does not extend to improving the standard of accommodation built some time ago in accordance with the standards which prevailed at the time (*Quick v Taff-Ely BC* [1985]

3 All E.R. 321). Works carried out by the landlord of a house which involved the replacement of the entire front and rear elevations, and of the roof, and the fitting of new windows and doors were not works of “repair” falling within this section (*McDougall v Easington DC* (1989) 21 H.L.R. 310). The replacement of plaster saturated by condensation could be covered by the landlord’s duty to “repair” under this section (*Staves v Leeds City Council* [1990] 11 C.L. 339). The statutory duty to “keep in repair” an ancient listed Grade 1 building was satisfied in circumstances where the landlords had over the years carried out running repairs to the roof, even though they knew it needed replacing (*Trustees of the Dame Margaret Hungerford Charity v Beazeley*, *The Times*, May 17, 1993).

A repairing covenant in standard form contained in a lease of commercial premises did not impose liability on the tenant to remedy defects in the original construction of the building (*Post Office v Aquarius Properties* (1987) 281 E.G. 798). Substantial works to the roof of a building were to be regarded as “repair or replacement” within the terms of a repairing covenant, rather than an improvement (*New England Properties v Portsmouth New Shops* [1993] 23 E.G. 130).

(Highways Act 1980 (c.66) s.56.) The presence of vegetation on a bridleway did not render it “out of repair” (*Westley v Hertfordshire CC*, *The Times*, March 5, 1998).

Work required to remedy inherent defects in design which were the cause of excessive condensation and mould are not works of “repair” within the meaning of s.4 of the Defective Premises Act 1972 or s.11(1) of the Landlord and Tenant Act 1985. (*Lee v Leeds City Council* [2002] 1 W.L.R. 1488, CA).

“Repair” (Industrial Tribunal Training (Construction Board) Order 1980 (SI 1980/1274) Sch.1 para.1(a), (c), as amended by Industrial Training (Construction Board) Order 1964 (Amendment) Order 1982 (SI 1982/922)): see ALTERATION.

“Construction, repair or maintenance of the building” (Building (Safety, Health and Welfare) Regulations 1948 (No.1145)): see CONSTRUCTION.

Repair a road, a railway, or a highway: see MAINTAIN; MAINTENANCE.

“Repair, form, and pave”: a street: see FORM.

“Repair or maintenance”: see MAINTENANCE.

“Repair”; “repairs”: Stat. Def., Housing Repairs and Rents Act 1954 (c.53) s.49(1); Landlord and Tenant Act 1954 (c.56) s.69(1); Housing (Repairs and Rents) (Scotland) Act 1954 (c.50) s.39(1); Repair of Benefice Buildings Measure 1972 (No.2) s.2.

“Repairs increase”: Stat. Def., Housing (Repairs and Rents) (Scotland) Act 1954 (c.50) s.16; Housing Repairs and Rents Act 1954 (c.53) s.23.

For discussion of the concepts of maintenance and repair in the context of highways, see *Valentine v Transport for London* [2010] EWCA Civ 1358.

“26. Repair is the converse of disrepair. A state of disrepair connotes a deterioration from some previous physical condition. Accordingly, that which requires repair is in a condition worse than it was at some earlier time: *Quick v Taff Ely Borough Council* [1986] QB 809; *Post Office v Aquarius Properties Ltd* (1987) 54 P & CR 61. If it is shown that property is worse than it was at some earlier time, it does not matter whether the deterioration resulted from error in design, or in workmanship, or from deliberate parsimony or any other cause: *Post Office v Aquarius Properties Ltd*. In our case the hereditament was, in this sense, worse than it was at some earlier time because of the decision to strip out the interior. Why that decision was taken does not matter. The intentions of the particular property owner or ratepayer are irrelevant since value must be objectively assessed; and in any event we are in a world of hypothetical

REPAIRED

parties. Mr Reade objected that this violated the principle stated by Lush J because it was looking back into the past at what the hereditament had once been. But as I have said, the principle of reality must yield to any counter-factual assumption which the valuation framework requires. In order to decide whether works are works of repair fairly so-called it is necessary to compare the hereditament in its actual state with its previous state. This comparison is a necessary preliminary to the making of the assumption that the statute requires. I thus agree with the Valuation Tribunal that on the material date the hereditament was ‘an office suite in disrepair.’” (*Newbigin (Valuation Officer) v S J & J Monk (a firm)* [2015] EWCA Civ 78.)

See DILAPIDATION; GOOD CONDITION; GOOD REPAIR; LIABLE; PERFECT REPAIR; REPAIRS, TENANTABLE REPAIR; REBUILDING; IMPROVEMENT; MAINTAIN.

REPAIRED VALUE. See *Angel v Merchants’ Marine Insurance* [1903] 1 K.B. 811, cited TOTAL LOSS.

REPAIRING LEASE. “The term ‘repairing lease’ has no very precise significance” (per Erle C.J., *Easton v Pratt*, 33 L.J. Ex. 234). In that case the Exchequer Chamber (in the absence of a controlling context) held that a lease—containing a covenant by the lessee to “repair, maintain, amend and keep” the premises repaired (under which phrase “keep repaired” the lessee is bound to PUT the premises in repair—*Payne v Haine*, 16 L.J. Ex. 130, cited KEEP), coupled with covenants by the lessee to deliver up in good repair and to allow the lessor enter and view and for the tenant to repair on notice—was a good exercise of a power to grant a “repairing lease”. It would seem to follow that an agreement to grant a “repairing lease” does not entitle the lessor to covenants for painting, papering, etc. at stated periods, on which see judgment of Jessel M.R., *Truscott v Diamond Rock-Boring Co*, 20 Ch. D. 251, cited IMPROVE, where referring to *Easton v Pratt* (above) that learned judge said it was “a decision that the insertion of a covenant by a tenant to repair and keep in repair the premises, makes the lease a repairing lease”: see REPAIR; TENANTABLE REPAIR; BUILDING LEASE.

“‘Improve’ and ‘repair’ are not equivalent words” (per Brett L.J., *Truscott v Diamond Rock-Boring Co*, 20 Ch. D. 251, cited IMPROVE).

REPAIRS. “Repairs” (s.70 of the Church Building Act 1818 (c.45)) includes not only repairs to the fabric of a church, but also the expenses necessary for the proper and decent performance of divine service, and the other offices to be performed therein and necessarily incident thereto (*R. v Consistory Court*, 31 L.J.Q.B. 106).

The cleaning of a flue held to be “executing repairs” within a provision in a lease (*Greg v Planque* [1926] 1 K.B. 669).

“Running repairs” (Factories Act 1937 (c.67) s.151(1), now Factories Act 1961 (c.34) s.175(10)) are repairs of defects which arise in a vehicle in the course of its ordinary running (*Griffin v London Transport Executive* [1950] 1 All E.R. 716).

Repairs under s.71 of the Metropolitan Water Board (Various Powers) Act 1907 (c. clxxiv): see *Metropolitan Water Board v David* [1919] 1 K.B. 44.

Repairs in s.28 of the Law of Property Act 1925 (c.20), and in Settled Land Act 1925 (c.18): see *Re Gray* [1927] 1 Ch. 242; *Re Conquest* [1929] 2 Ch. 353.

Stat. Def., Increase of Rent, etc. Act 1920 (c.17) s.2, on which see *Wates v Rowland* [1952] 2 Q.B. 12 (floor replacement was an improvement); and Act of 1923 (c.7) s.18.

“Necessary repairs”: see NECESSARY.

“Repairs and necessities” to a ship: see Abbott, Pt 2, Ch.3; NECESSARIES.

REPARATION. See REPAIR; “necessary occasions”, under NECESSARY.

REPASS. See PASS AND REPASS.

REPAY. “75. . . ‘Repay’ can properly describe the means of refunding the amount of the tax to whoever has a legal claim for its recovery. . . .

76. Although the word ‘repay’ taken in isolation is obviously capable of describing the satisfaction of any claim for the recovery of overpaid or undue tax, we consider that the natural meaning of the phrase ‘credit or repay any amount accounted for or paid to them by way of VAT’ read in context is the refunding of the tax to the taxpayer. The use of ‘repay’ merely reflects the provisions of s.80(2A) which were intended to extend to taxpayers who were repayment traders. Since the terminology of s.80(7) is explicable by and reflective of the earlier provisions of s.80, we are not persuaded that it should be given some wider and much less natural meaning. But if resort is to be made to a purposive approach to construction then that exercise has, we think, to involve a consideration of the legislative history. The judge undertook this exercise but thought it was unhelpful. We take a different view.” (*Investment Trust Companies v Revenue and Customs Commissioners* [2015] EWCA Civ 82.)

REPAYMENT. “Repayment” (Finance (No.2) Act 1939 (c.109) s.15) meant repayment in cash (*Inland Revenue Commissioners v John Dow Stuart* [1950] A.C. 149).

“Repayment or return of share capital” (Finance Act 1951 (c.43) s.31(5)); see *IRC v Pollock and Peel* [1956] 1 W.L.R. 951.

“Repayment or distribution of capital”: Stat. Def., Transport Act 1947 (c.49) s.125.

REPAYMENT (OF TAX). Stat. Def., Finance Act 2007 Sch.24 para.28.

REPEAL. “‘Repealed’ is not to be taken in an absolute, if it appear upon the whole Act to be used in a limited sense” (per Ellenborough C.J., *R. v Rogers*, 10 Ea. 573). But the general rule is “that when an Act of Parliament is ‘repealed’ it must be considered (except as to transactions past and closed) as if it had never existed” (per Tenterden C.J., *Surtees v Ellison*, 9 B. & C. 752). See further *R. v Morgan*, 8 A. & E. 499 at 500; Dwar. 530–535; Maxwell (9th edn), Ch.VII.

REPEALED. See ABOLISHED.

REPEAT. An agreement to pay commission to an agent “on all repeat [orders]” meant on orders received during the period of the contract (*Crocker Horlock v Lang & Co* [1949] 1 All E.R. 526).

“Repeated offences” (Prison Rules (1964 No.388) r.51) do not have to be the same offence repeated several times. A series of different offences would be covered by this rule (*R. v Board of Visitors Dartmoor Prison, Ex p. Seray-Wurie*, *The Times*, February 5, 1982).

See MULTIPLY.

“Repeated legacy”: see CUMULATIVE.

REPLEVIN. “‘Replevin’ is derived of *replegiare*, to redeliver to the owner upon pledges or suretie” (Co. Litt. 161A; see further Co. Litt. 145B; *Termes de la Ley*; *Mounsey v Dawson*, 6 A. & E. 756 at 759–761).

See hereon Woodf. (24th edn), Ch.9, s.2; Redman (5th edn), Ch.7, s.4; Fawcett (2nd edn), 283.

REPLICATION. A replication, in pleading, was the plaintiff’s answer to the defendant’s original plea (3 Bl. Com. 309, 310). Its place is taken by the modern reply.

REPLY. See WAITING YOUR REPLY.

“Reply” (the old R.S.C. Ord.21 r.14, see now Ord.18) did not include a counter-claim (*Street v Gover*, 2 Q.B.D. 498; *Alcoy v Greenhill* [1896] 1 Ch. 19). See PLEADING.

REPO. Stat. Def., Income Tax Act 2007 s.569.

REPORT. “The above cargo is accepted on the report and samples of Scott & Co”, is a warranty that the bulk is equal to the report and samples; and is not merely a representation that the report is the genuine report of Scott & Co, and that the samples were taken by them (*Russell v Nicolopulo*, 8 C.B.N.S. 362). See SAMPLE; FAIR REPORT; SURVEYOR.

Report by an auditor on a company’s affairs: see *Newton v Birmingham Small Arms Co* [1906] 2 Ch. 378, cited AUDIT.

“Report to the members” (Companies Act 1929 (c.23) s.134(1), now Companies Act 1985 (c.6) s.236(1)): auditors of a company perform their duty under this section to “make a report to the members” by sending their report to the secretary (*Re Allen, Craig & Co (London) Ltd* [1934] Ch. 483).

The further report of an official receiver under s.8(2) of the Companies Winding-up Act 1890 (c.63)—see s.563 of the Companies Act 1985 (c.6)—is absolutely privileged: see *Bottomley v Brougham* [1908] 1 K.B. 584.

As to the privilege of a fair and correct report of judicial proceedings, see *Kimber v Press Association* [1893] 1 Q.B. 65; of a constable to justices, *Andrewes v Nott Bower* [1895] 1 Q.B. 888. See also PUBLIC MEETING; SHAMEFUL.

The “report” of justices to quarter sessions (s.1(2) of the Licensing Act 1904 (c.23)) did not amount to evidence on which the quarter sessions might rely (*Dartford Brewery Co v County of London Quarter Sessions* [1906] 1 K.B. 695). See further *R. v Jackson*, 96 L.T. 77; JUDICIAL ACT. Cp. Licensing (Consolidation) Act 1910 (c.24) s.19.

“Report the accident . . . within twenty-four hours” (Road Traffic Acts, now Road Traffic Act 1972 (c.20) s.25(2)). Where a person was stopped by a police constable within twenty-four hours of an accident and his name and address were asked for and given, he was held not to have complied with the requirement to “report the accident” “within twenty-four hours” (*Dawson v Winter* (1932) 149 L.T. 18).

(Education Act 1944 (c.31) Sch.1 Pt II para.7.) A bare recommendation from the education committee of a local authority relating to a school closure was not sufficient to constitute a “report” for the purposes of this paragraph (*R. v Kirkless Metropolitan BC, Ex p. Molloy* (1988) 86 L.G.R. 115). But a report by the sub-committee of an education committee, which was considered but not adopted by the education committee, was held to be sufficient to constitute a “report” by the education committee (*R. v Secretary of State for Education and Science, Ex p. Threapleton, The Times*, June 2, 1988). So also was a report by a director of education which the education committee adopted and submitted to the council (*Nichol v Gateshead Metropolitan BC* (1989) 87 L.G.R. 435).

(Defamation Act 1952 (c.66) Sch.1 para.5.) A “report” of proceedings did not have to be a contemporary report or item of recent news, and later events did not have any impact on its fairness or accuracy, which was to be measured by reference to that to which it purported to relate (*Tsikata v Newspaper Publishing Plc* [1997] 1 All E.R. 655).

“Report or award of referee or arbitrator”: see EQUIVALENT.

REPOSITORY. (Town and Country Planning Act 1947 (c.51) s.12.) A basement used as a workshop, or for storing, sorting, dispatching and repairing goods used in the occupier's shop opposite the basement was not a "repository" within Class X of the Schedule to Town and Country Planning (Use Classes) Order 1950 (No.1131) (*Horwitz v Rowson* [1960] 1 W.L.R. 803). Use of hangars by the Home Office for storing civil defence vehicles was held to be use as a "repository" within the meaning of Class X of this Schedule (*Newbury DC v Secretary of State for the Environment* [1980] 2 W.L.R. 379).

(Town and Country Planning (Use Classes) Order 1963 (No.708) Class X.) An agricultural building on a farm used for storing farm machinery and equipment is not a "repository" (*Trentham, G. Percy v Gloucestershire CC* [1966] 1 W.L.R. 506).

REPRESENT. You may "represent" a state of things without making a direct communication thereon to the person affected thereby. Therefore, where a vendor of coals affixed a metal label to a sack of coal indicating that when full the sack contained 12 cwt., held, that he thereby "represented" that it did contain that weight, within s.29 of the Weights and Measures Act 1889 (c.21) (*Franklin v Godfrey*, 63 L.J.M.C. 239; cp. WRITTEN WARRANTY). But the representation must be by the "seller"; for an unauthorised verbal representation by a servant no one is responsible; not the master because it was unauthorised, and not the servant because he is not the seller (*Roberts v Woodward*, 25 Q.B.D. 412; but see SELLER); *secus*, when the representation is made by an agent in the course of his employ, for then it is the same as if made by the seller himself (*Baker v Herd*, 10 T.L.R. 181).

So, articles of a peculiar character, when offered for sale, are by the fact of such offer represented to be what they appear to be, e.g. an imitation antique, which has the appearance of being genuine, is, without any word being spoken, represented as genuine, and if sold without explanation of its real character, the sale is on a misrepresentation (*Patterson v Landsberg*, 42 S.L.R. 542).

The manager of a theatre acting under the instructions of the proprietor, did not "represent, or cause to represent", the plays that were performed therein, within s.2 of the Dramatic Copyright Act 1833 (c.15) (*French v Gregory*, 9 T.L.R. 548); but a person who, for a benevolent purpose, got up a dramatic performance, was within the section (*Duck v Mayeu*, 8 T.L.R. 339, 737, cited also RELEASE).

Selling cinematograph films of a dramatic piece for exhibition was not to "represent" or "cause to be represented" the piece: see *Harno v Pathé*, 25 T.L.R. 242.

"Represented to the court" (Police and Criminal Evidence Act 1984 (c.60) s.76(2)). A suggestion during cross-examination that an alleged confession was improperly obtained is not a representation within the meaning of this section (*R. v Liverpool Juvenile Court, Ex p. R.* [1988] Q.B. 1).

See HESITATE; MISREPRESENT; PATENT.

REPRESENTATION. "Representation" (Inheritance (Family Provision) Act 1938 (c.45) s.2(1)). Reference in the section was to probate and letters of administration with the will annexed but not the grant of letters of administration simpliciter (*Re Bidie* [1948] 2 All E.R. 995).

"Representation... is first carried out" (Inheritance (Provision for Family and Dependants) Act 1975 (c.63) s.4). Representation in this section is restricted to cover only effective or valid representation, such as the grant of letters of administration (*Re Freeman (Deceased)* [1984] 1 W.L.R. 1419).

Entitled "by descent, representation, or otherwise": see *Re Stratten*, 49 S.J. 651.

REPRESENTATIVE

“A representation is not like a warranty; it is not necessary that it should be strictly complied with; it is enough if it is substantially true; it is enough if it is substantially complied with” (per Lord Wright M.R., *With v O’Flanagan* [1936] Ch. 575 at 581).

“Representations” which were “otherwise published” (Obscene Publications Act 1857 (c.83) s.1): photographic negatives, although not intended for sale, were within the section and could be made the subject of an order for destruction (*Cox v Stinton* [1951] 2 K.B. 1021).

“Representations made by the prosecutor or accused” (Criminal Law Act 1977 (c.45) s.23(1)) are submissions coupled with assertions of fact and the production of documents, and the phrase does not lay any obligation on the justices to hear evidence as to the value of property purported to have been criminally damaged, though they have the discretion to do so (*R. v Canterbury Justices, Ex p. Klisiak* [1981] 3 W.L.R. 60).

“Representation which he knows to be false” (Immigration Act 1971 (c.77) s.26(1)(c)). Presentation to the immigration officer of a passport and a fraudulently obtained entry clearance was a “representation” within the meaning of this section, notwithstanding that nothing was said (*R. v Secretary of State for the Home Department, Ex p. Patel* [1986] Imm.A.R. 515, distinguishing *R. v Secretary of State for the Home Department, Ex p. Addo*, *The Times*, April 18, 1985).

“Represented for the purposes of sentence” (Powers of Criminal Courts Act 1973 (c.62) s.21). An offender is not “represented” within the meaning of this section if, having been represented by counsel when he was arraigned and pleaded guilty, he is not so represented when sentence is passed (*R. v Hollywood (Paul)* (1990) 12 Cr.App.R.(S.) 325).

“Upon any representation or assurance”: see UPON.

Stat. Def., Merchant Shipping Act 1894 (c.60) s.742; Finance Act 1894 (c.30) s.22(1)(c); Administration of Estates Act 1925 (c.23) s.55; Hire-Purchase Act 1965 (c.66) s.16(4); Medicines Act 1968 (c.67) s.92(5); Consumer Credit Act 1974 (c.39) s.189; Fraud Act 2006 s.2(3) and (4).

Stat. Def., Legal Aid, Sentencing and Punishment of Offenders Act 2012 s.42.

“Material representation”: see Marine Insurance Act 1906 (c.41) s.20.

See FALSE REPRESENTATION; REPRESENT; WARRANTY.

REPRESENTATIVE. A solicitor is the representative of his client; but counsel is not, for counsel “has the whole conduct of the case, and can act even against the instructions of the client” (per Brett M.R., *R. v Greenwich County Court Registrar*, 15 Q.B.D. 54). In that case it was accordingly held that a solicitor was a “representative” within s.17(4) of the Bankruptcy Act 1883 (c.52), and had to be “authorised in writing” to entitle him to question a debtor at a public examination. See Bankruptcy Act 1914 (c.59) s.15(4).

An appointment of A, by B as “representative” for C (a trading company), does not show that B is acting as agent for C, for “representative” “is very often used in mercantile correspondence with considerable laxity, and without exact reference to its strict and accurate meaning” (per Lord Kinnear, *Stewart v Shannessey*, 37 S.L.R. 975).

The signification of “representative”, when used in reference to the ownership of land, is a question of fact; it may mean heir, or devisee, or executor, or legatee, deriving under an absolute owner, or (e.g. in receipts for rents) the successor to a person having only a limited estate (*M’Auliffe v Fitzsimmons*, 26 L.R. Ir. 29, applying *Lyell v Kennedy*, 14 App. Cas. 460, cited WRONGFULLY CLAIMING).

Stat. Def., Criminal Justice Act 1925 (c.86) s.33; Representation of the People Act 1918 (c.64); Pharmacy and Poisons Act 1933 (c.25) s.10(6); Criminal Justice (Scotland) Act 1949 (c.94) s.40(8); Medicines Act 1968 (c.67) s.72(4).

See REPRESENTATIVES; REAL REPRESENTATIVE; PERSONAL REPRESENTATIVE; ADMINISTRATOR; EXECUTOR.

REPRESENTATIVES. “The ordinary legal sense of the term ‘representatives’, without the addition of ‘legal’ or ‘personal’, is executors or administrators” (Wms. Exs. (12th edn), 729; *Re Crawford*, 23 L.J. Ch. 625; *Re Henderson*, 28 Bea. 656; *Leak v MacDowall*, 3 N.R. 185; *Lindsay v Ellicott*, 46 L.J. Ch. 878; *Re Ware*, 45 Ch. D. 269); but in *Re Horner*, *Eagleton v Horner* (3 Ch. D. 695), Stirling J. contextually construed “representatives” as “next of kin” or as “descendants”. So, in a bequest to A for life, and, at his death, the principal to be paid “to such children or representatives of children, as he may leave”, “representatives” mean “descendants” (*Herbert v Forbes*, 1 L.J. Ch. 118). See also *Booth v Vicars*, 13 L.J. Ch. 147.

In a proviso to a bond enabling the obligor or his “representatives” to DETERMINE the obligation, “representatives” includes the executors or administrators of the obligor (*Re Silvester* [1895] 1 Ch. 573).

Notice to quit to a lessor, or lessee, “his representatives of assigns”: see *Easton v Penny*, 67 L.T. 290.

See LEGAL REPRESENTATIVES; NATURAL REPRESENTATIVES; PERSONAL REPRESENTATIVES; REAL REPRESENTATIVE; REPRESENTATIVE.

REPRESENTED. “Represented in a special or particular manner”, under s.9 of the Trade Marks Act 1905 (c.15): see *Re British Milk Product Co’s Application* [1915] 2 Ch. 202. See Trade Marks Act 1938 (c.22) s.9(1).

REPRESENTING OR PERFORMING. The words “representing or performing” a dramatic piece or musical composition within the Copyright Act 1842 (c.45) s.20, meant “that there must be publicity in the audience” (per Brett M.R., *Wall v Taylor*, 52 L.J.Q.B. 562; the judgment at this passage seems to have been incorrectly reported at 11 Q.B.D. 107: see *Duck v Bates*, 53 L.J.Q.B. 99). See also *Duck v Bates*, on appeal, 13 Q.B.D. 843, as to what would be publicity; see further “place of dramatic entertainment”, under PLACE.

See PERFORM; REPRESENT.

REPRIEVE. “‘Reprieve’ may be derived from the French *repris*, that is, taken back; so that to ‘reprieve’ is properly to take back, or suspend, a prisoner from the execution and proceeding of the law for that time” (Cowel). See hereon 4 Bl. Com., Ch.31.

Cp. RESPITE; NOLLE PROSEQUI.

REPRINTING. See PRINT.

REPRISAL. “Letters of marque or reprisal”: see LETTER.

REPRISES. “‘Reprises’ are deductions, payments, and duties, that goe yearely and are payed out of mannour: As rent charge, rent secke, pensions, corodies, annuities, fees of stewards or baylives, and such like” (Termes de la Ley). See hereon *R. v Shaw*, 12 Q.B. 427, cited OUTGOING.

REPROCESSING. Stat. Def., “means a process or operation, the purpose of which is to extract radioactive isotopes from spent fuel for further use” (Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 (SI 2008/3087) reg.3).

REPRODUCTION

REPRODUCTION. A copy of “reproduction” of a painting, drawing or photograph (s.1 of the Fine Arts Copyright Act 1862 (c.68)) had to be on some material or thing which might be forfeited under s.6; a tableau vivant representing a picture was not a copy or reproduction of it (*Hanfstaengl v Empire Palace* [1894] 2 Ch. 1; [1894] 3 Ch. 109; in House of Lords, sub nom. *Hanfstaengl v Baines* [1895] A.C. 20). See MULTIPLY. See hereon *Haufstaengl v Smith* [1905] 1 Ch. 524, cited COPY.

“Reproduction” (Copyright Act 1956 (c.74) s.2(5)): an unconscious copying of music is “reproduction” rather than an “arrangement” or “transcription” which are the necessary result of a conscious and deliberate process. “Reproduction” need not be identical reproduction, it is enough if the alleged infringing work is substantially the same as the original work (*Francis Day & Hunter Ltd v Bron* [1963] 2 W.L.R. 868).

“Reproduction” (Copyright Act 1956 (c.74) s.48(1)). The direct copying of a three-dimensional object is the indirect copying of the manufacturer’s drawings and was held to be “reproduction” (*L.B. (Plastics) v Swish Products* [1979] F.S.R. 145—knock-down drawers for the furniture industry; *British Leyland Motor Corp v Armstrong Patents Co* [1986] 2 W.L.R. 400—car’s exhaust pipe).

The making of electric light fittings in accordance with certain drawings constitutes “reproduction” of such drawings in three-dimensional form, within the meaning of s.49(2)(c) of the Copyright Act 1956 (c.74) (*Merchant-Adventurers Ltd v Grew (M.) & Co* [1972] Ch. 242).

A gramophone record having no connection with London, other than a label marked “Souvenir of London”, is not a “reproduction” or “souvenir” within the meaning of para.1(6) of Sch.5 to the Shops Act 1950 (c.28) (*Disci v Westminster City Council*, 66 L.G.R. 639).

Stat. Def., Finance Act 1952 (c.33) s.2; Copyright Act 1956 (c.74) ss.48(1), 49(1).

REPUBLICATION. A codicil, or a subsequent will, may republish a prior will (*Allen v Maddock*, 11 Moo. P.C. 427), but to do so it must contain either an express republication, or some mention of the former will from which may be gathered an intention to republish it (*Re Smith*, 45 Ch. D. 632, cited FEME). If there was such a republication, a legacy, void under s.15 of the Will Act 1837 (c.26), might be set up by a codicil to which the legatee was not an attesting witness (*Anderson v Anderson*, L.R. 13 Eq. 381; *Re Trotter* [1899] 1 Ch. 764). See further *Re Blackburn*, 43 Ch. D. 75; PUBLICATION. See *Re Champion* [1893] 1 Ch. 101, cited CONFIRM; *Re Reeves*, 139 L.T. 66.

A codicil confirming a will does not effect such a republication as to make the will for all purposes construable as if made at the date of the codicil: see *Re Park* [1910] 2 Ch. 322.

REPUDIATION. Repudiation in relation to a contract may mean: (a) a denial that there was a contract in the sense of an actual *consensus ad idem*; (b) a claim that apparent consent was vitiated by fraud, duress, mistake or illegality; (c) a claim that the contract is not binding owing to a failure of condition or breach of duty which invalidates the contract; (d) an unequivocal refusal to proceed with an admittedly binding contract, or, most commonly; or (e) an anticipatory breach whereby one party to a contract indicates an intention not to be bound thereby, whereupon the other party accepts the repudiation and rescinds the contract. There is a difference between repudiating a contract and repudiating liability thereunder (*Heyman v Darwins* [1942] A.C. 356, 378; *Toller v Law Accident Insurance Society* [1936] 2 All E.R. 952). “There

must be a conscious act [of repudiation] in relation to the contract in question. That distinguishes it from the frustration of a contract" (per Lord Goddard C.J., *William Cory & Son Ltd v City of London Corp* [1951] 2 K.B. 476).

"Repudiation of a contract is nothing but a breach of contract. Except where it is accepted as an anticipatory breach and as a ground for a claim of damages, a repudiation can never be said to be accepted by the other party except in the sense that he acquiesces in it and does not propose to take any action" (per Lord Keith, *White and Carter (Councils) v McGregor* [1962] A.C. 413).

As to repudiation by making "defective deliveries in respect of one or more instalments" under a contract for the sale of goods to be delivered by stated instalments" (Sale of Goods Act 1893 (c.71) s.31(2)) see *Maple Flock Co Ltd v Universal Furniture Producers (Wembley) Ltd* [1934] 1 K.B. 148.

REPUGNANT. That is repugnant which "is contrary to anything said before" (Jacob), e.g. a direction that a donee in fee (who is not a married woman) shall not sell the land given, is repugnant because the right to alienate is inherent in the gift. See further CONDITION; PROVISIO.

A tramway company's by-law that "no person shall swear, or use offensive or obscene language, whilst in or upon any carriage", was not "repugnant" to law (see s.46 of the Tramways Act 1870 (c.78)) by reason of its not providing that such language should be such as to be "to the annoyance of passengers", or words of that kind (*Gentel v Rapps* [1902] 1 K.B. 160); "a bye-law is not 'repugnant' to the general law merely because it prohibits something which the general law does not declare unlawful. It is only 'repugnant' where it purports to prohibit something which the general law, either expressly or by necessary implication, declares lawful. The bye-law would be none the less 'repugnant' because the provision which it contradicted was only implied. If, for example, a statute provided that it should be an offence to travel without a railway ticket 'with intent to defraud', a bye-law which reiterated that provision with a similar penalty but omitted the words 'with intent to defraud' would, no doubt, be repugnant to the statute. A bye-law which purported to make lawful something which the general law declared unlawful, would also, of course, be repugnant; but such a bye-law is not very likely to be made" (per Channell J., *Gentel*). Semble, the criterion was: Were the words of the statute, which were omitted in a by-law, of the essence of the statutory provision? See hereon PEACE.

"Repugnancy to the laws of England" which made colonial legislation void (s.3, expounding Colonial Laws Validity Act 1865 (c.63) s.2) meant repugnancy to such English legislation only as by express terms or necessary intendment was made applicable to the colony; and did not otherwise restrict the powers of a colonial legislature (*R v Marais* [1902] A.C. 51). See further *Nadan v R.* [1926] A.C. 482.

REPUTE. "Character and repute": see *R. v Franklin*, 3 Cr.App.R. 48, cited CHARACTER; see also PRIMA FACIE EVIDENCE; *R. v Hayward*, 137 L.T. 64.

REPUTED MANOR. See MANOR.

REPUTED MARRIAGE. See MARRIAGE.

REPUTED WIFE. See WIFE.

REQUEST. "At the request" of urban authority (s.38 of the Waterworks Clauses Act 1847 (c.17)): see *Grand Junction Waterworks Co v Brentford* [1894] 2 Q.B. 735. See Water Act 1945 (c.42) Sch.3 Pt VIII art.32.

REQUIRE

"I request you to give A credit for goods, and guarantee his payment for same", is an absolute guarantee, and is not, by the use of the words "I request", determined by the death of the guarantor (*Bradbury v Morgan*, 31 L.J. Ex. 462).

"Request to surrender the goods" (Hire-Purchase Act 1938 (c.53) s.10): see *Smart Brothers Ltd v Pratt* [1940] 2 K.B. 498.

The reference in s.26 of the Landlord and Tenant Act 1954 to the making of a request by a tenant for a new tenancy did not require the tenant to have a genuine intention of taking up the new tenancy. "Request" was to be given its ordinary English meaning of asking for something. Similarly "proposal" was to be given its ordinary English meaning of something put forward for consideration. The meaning of "request" and "proposal" was to be judged objectively without reference to the state of mind of the person making them. Where an Act requires an intention it says so (*Sun Life Assurance Plc v Thales Tracs Ltd* [2002] 1 All E.R. 64, CA).

"Instigation or request": see INSTIGATION.

"Letter of request": see LETTER.

"On request": see ON DEMAND.

See AUTHORITY OR REQUEST; CONSENT; EARNEST; PRECATORY TRUST; REASONABLY REQUIRE.

REQUIRE; REQUIRED. In a contractual obligation whereby one party is to do or permit such things as the other may "require", the word means "reasonably require" (*Braunstein v Accidental Insurance*, 31 L.J.Q.B. 17). Therefore, where an agreement for a mortgage provides that the mortgage shall be in such form and shall contain such clauses as the mortgagee shall "require", that does not entitle him to have included the goodwill of the business carried on in the property to be mortgaged (*Whitley v Challis* [1892] 1 Ch. 64, cited GOODWILL), nor to have a clause preserving the right to consolidate and excluding s.93 of the Law of Property Act 1925 (c.20) (*Farmer v Pitt* [1902] 1 Ch. 954): see CONSOLIDATE.

The words "entitled to require any legal estate to be conveyed" (Law of Property Act 1925 (c.20) Sch.I Pt II para.3) do not apply to a case where a person can by deed, under s.89(3), declare the legal estate to be vested in himself (*St. Germans (Earl) v Barker*, 105 L.J. Ch. 219).

A power to erect hotels vested in the Transport Commission by the Transport Act 1947 (c.49) s.2(1)(e), "where their passengers may require them" meant where a demand from railway passengers arose, not that one or several passengers could require the erection of an hotel (*Hotels Executive v Derby County BC* [1951] 1 K.B. 91).

"Require" (Road Safety Act 1967 (c.30) s.2(1); now Road Traffic Act 1972 (c.20) s.8, as amended). There is no set form of words which a constable must use to bring home to a driver that he is "requiring" him to take a breath test under this section (*R. v Clarke (Christopher)* [1969] 1 W.L.R. 1109). The words "I intend to give you a breath test" amount to a "requirement" for the purposes of this section (*R. v O'Boyle* [1973] R.T.R. 445). A request made at the roadside to provide a specimen is no longer a valid "requirement" once the motorist has arrived at the hospital (*R. v Crowley* [1977] R.T.R. 153).

"Required" (Road Safety Act 1967 (c.30) s.3(2); now Road Traffic Act 1972 (c.20) s.9, as amended). It is sufficient to satisfy this section if the constable believed that the requirement was being understood by the person required to provide a specimen (*R. v Nicholls* [1972] 1 W.L.R. 502).

“Require”, in a contract to supply, may mean the requirements or needs of a specified place or business excluding the personal element, and then the contract is assignable (*Tolhurst v Associated Portland Cement Manufacturers* [1903] A.C. 417, cited ASSIGNS); or, on the other hand, the personal element may be introduced and it may indicate the contractee’s personal requirements, and then the contract is not assignable (*Kemp v Baerselman* [1906] 2 K.B. 604, cited ASSIGNS). Cp. *Moon v Camberwell*, 89 L.T. 595, cited REQUIRED.

“Require a supply of water” (s.7 of the Metropolitan Water Board (Charges) Act 1907 (c. clxxi)) meant “ask for” or “request” and not “have need of”, and consequently in the absence of a request for a supply of water an action for the cost thereof was not maintainable under the section: see *Metropolitan Water Board v Johnson* [1913] 3 K.B. 900. See also s.6 of the Metropolitan Water Board (Charges) Act 1921 (c. xciv).

Accounts, etc. which might be directed if a charge had been made by a partner, “or which the circumstances may require” (s.23(2) of the Partnership Act 1890 (c.39)); this latter alternative was only to be exercised in special cases; the rule to be acted on in ordinary cases was given in the preceding paragraph of the clause; and seeing that if a charge had been made the assignee would not be entitled to partnership accounts (s.31(1)) so, under s.23(2), the court would only direct such accounts in special cases (*Brown v Hutchinson* [1895] 2 Q.B. 126).

“Require the payment of a premium” (Landlord and Tenant (Rent Control) Act 1949 (c.40) s.2(1)). A premium is required at a stated date, notwithstanding that it is made payable by instalments payable on later dates (*Regor Estates v Wright* [1951] 1 K.B. 689).

“Where money is required for the purpose of discharging an incumbrance on the settled land” (s.71 of the Settled Land Act 1925 (c.18)) does not merely mean where the incumbrance has been called in; “required” in this connection extends to all cases in which the economical administration of the settled estate reasonably demands that the incumbrance should be paid off, whether for the purpose of transfer or otherwise (per Kekewich J., *Re Pares*, unreported, applied by Buckley J., *Re Clifford* [1902] 1 Ch. 87). So, generally, in such a connection, “required” “does not mean more than this—where there is something proposed to be done which ought to be done, and the money is not forthcoming to do it” (per Kekewich J., *Re Bruce* [1905] 2 Ch. 372, cited ENFRANCHISEMENT).

“Moneys not required for the purposes of the trade or business” (Finance (No.2) Act 1939 (c.109) Sch.VII Pt II para.(3)): see *Acme Flooring & Paving Co (1904) v Inland Revenue Commissioners* [1948] 1 All E.R. 546.

“Required” (Income Tax Act 1952 (c.10) s.36(1)) did not mean “arbitrarily required” as the powers of assessment given to the special commissioners by s.170(3) were discretionary; therefore, the jurisdiction of the additional commissioners to make an assessment was not affected (*Grosvenor Place Estates Ltd v Roberts* [1961] Ch. 148).

Rent was not “required” in contravention of an Act when the lease granted was to take effect from a future date at which, as the law then stood, the Act would have expired (*Mauray v Durley Chine (Investments)* [1953] 2 Q.B. 433).

(Landlord and Tenant Act 1927 (c.36) s.5(3)(b)(i).) “Required” for occupation by the landlord meant that the landlord intended to occupy (*G.C. & E. Nuthall (1917) v Entertainments & General Investment Corp* [1947] 2 All E.R. 384). If the landlord

REQUIRE

genuinely desired possession, and intended to occupy the premises he was the sole arbiter of his own requirements (*Ireland v Taylor* [1949] 2 All E.R. 450).

“Otherwise required” (Housing Act 1936 (c.51) s.75): an open space was “required” if without it there would have been such a substantial deprivation of amenities that a real injury would have been done to the property owner (*Re Newhill Compulsory Purchase Order 1937, Payne’s Application* [1938] 2 All E.R. 163); see also OTHERWISE; PARK.

Land is not “required . . . for the purpose of carrying out . . . coast protection work” within the meaning of s.4(3) of the Coast Protection Act 1949 (c.74) if it is to be used for a promenade behind the sea wall, which is to be constructed at the same time, unless it contributes to the effectiveness of the wall (*Webb v Minister of Housing and Local Government* [1964] 1 W.L.R. 1295).

An order for the production of ballot papers under London BC Elections Rules 1968 (No.497) Sch. r.49(1) was “required” for the purpose of instituting a prosecution under s.51 of the Representation of the People Act 1949 (c.68) (*McWhirter v Platten* [1970] 1 Q.B. 508).

The word “required” in s.24(2) of the Agricultural Holdings Act 1948 (c.63), is not confined to a requirement exclusive to the landlord (*Rugby Water Board v Shaw-Fox* [1972] 2 W.L.R. 75). See also USE.

For the purpose of regulations under the Factories Acts, a place where a workman has to go to fetch the implements with which to do his work is a place to which he is “required” to go. It is not necessary that he should be ordered to go there (*Henaghan v Rederiet Forangirene* [1936] 2 All E.R. 1426).

“Required to work in accordance with his contract of employment” (Employment Protection Act 1975 (c.71) s.22(1); now Employment Protection (Consolidation) Act 1978 (c.44) s.12(1)). A part-time packer with no written contract of employment, who did not have to work on any particular day if she didn’t want to, was held not to be “required to work” “during any part” of any particular day “in accordance with her contract” within the meaning of this section (*Mailway (Southern) v Willsher* [1978] 1 C.R. 511).

“Required” (Offices, Shops and Railway Premises Act 1963 (c.41) s.23). A baker’s shop manageress who injured her back lifting a tray to get a loaf of bread for a customer was held not to have been “required” to lift it, contrary to s.23, by the suppliers to whom she had turned for help when her assistants failed to arrive, and who had told her to manage as best she could (*Black v Carricks (Caterers)* [1980] I.R.L.R. 448).

“A condition . . . to require the . . . licensee to acquire” (Patents and Designs Act 1907 (c.29) s.38(1)) refers to a condition under which the licensee is obliged to buy the article concerned from the licensor (*Tool Metal Manufacturing Co v Tungsten Electric Co* [1955] 1 W.L.R. 761).

“Required . . . to pass on foot” (Coal and Other Mines (Sidings) Order 1956 (SI 1956/1773) Sch. reg.20). “Required” does not mean “ordered” or “instructed”. A colliery shunter was “required” to use his usual path alongside a railway track, even though it was temporarily blocked by a heap of debris and he could have taken another safe route (*Smith v National Coal Board* [1967] 1 W.L.R. 871).

“Regulation whereby he is required to cause any books, records or documents to be kept” (Transport Act 1968 (c.73) s.98(4) as amended by the Road Traffic (Drivers’ Ages and Hours of Work) Act 1976 (c.3) s.2(1)(g)). The instructions contained in

art.14(1) of Council Regulations (EEC) 543/69 relating to the insertion by drivers of goods vehicles of their names, addresses and ages in their individual control books were not “requirements” within the meaning of this section (*Oxford v Spencer* [1983] R.T.R. 63).

“A constable in uniform may require” (Highways Act 1980 (c.66) s.140(2)). A request under this section must be made by personal confrontation. A telephoned request is not sufficient (*R. v Worthing Justices, Ex p. Waste Management* [1989] R.T.R. 131).

“Any document . . . required for any accounting purpose” (Theft Act 1968 (c.60) s.17(1)(a)). Where, for accounting purposes, a telephone operator had a duty to complete a standard printed form recording each call, that document became a document “required for any accounting purpose” and could be “falsified” within the meaning of this section if no document was completed (*R. v Shama* [1990] 1 W.L.R. 661).

“Land is required” (Town and Country Planning Act 1971 (c.78) s.112(1)). “Required” here means “needed” for the accomplishment of one of the activities or purposes set out in the section (*R. v Secretary of State for the Environment, Ex p. Sharkey* [1991] N.P.C. 112).

(Town and Country Planning Act 1990 (c.8) s.226.) “Required” in the context of s.226 means more than “convenient” and less than “indispensable” (*R. v Leeds City Council, Ex p. Leeds Industrial Co-operative Society Ltd* (1997) 73 P. & C.R. 70).

“Required”: Stat. Def., Income and Corporation Taxes Act 1970 (c.10) s.348(3)(b).

“Immediate possession if required”: see IMMEDIATE POSSESSION.

“No longer required”: see USELESS.

Title shall not be “required”: see INVESTIGATING.

REQUIRE ACCOMMODATION. A child without accommodation did not necessarily “require” it within the meaning of the Children Act 1989 (*R. (G.) v Southwark London Borough Council* [2008] EWCA Civ 877).

REQUIRED. “20. The debate in this court has centred on two parts of the definition: ‘required by . . . administrative provisions’ and ‘set the framework for future development consent . . .’.” (*R. (on the application of Buckinghamshire CC) v Secretary of State for Transport* [2014] UKSC 3.)

REQUIRED BY ADMINISTRATIVE PROVISIONS. “21. As explained by the CJEU, the word ‘required’ in this context means no more than ‘regulated’: I-E Bruxelles para.31. But it is less clear how that concept applies to administrative, as opposed to legislative or regulatory, provisions. In *Walton v The Scottish Ministers* [2012] UKSC 44; [2013] PTSR 51, at para.99, I said:

‘There may be some uncertainty as to what in the definition is meant by “administrative”, as opposed to “legislative or regulatory”, provisions. However, it seems that some level of formality is needed: the administrative provisions must be such as to identify both the competent authorities and the procedure for preparation and adoption.’” (*HS2 Action Alliance Ltd, R. (on the application of) v The Secretary of State for Transport* [2014] UKSC 3.)

REQUIRED TO LEAVE. See REMOVE.

REQUIREMENT. Requirements as meaning “needs”: see *Kier & Co v Whitehead Iron & Steel Co*, 158 L.T. 228.

“Requirements” (Ministry of Social Security Act 1966 (c.20) s.4(1) Sch.2 para.3(2), now Supplementary Benefits Act 1976 (c.71) s.1(1) Sch.1 para.3(2)) mean the needs

REQUIRES

of the person necessary to pay for the necessities of life, such as a home, food, clothes, etc. (*K. v JMP Co* [1975] All E.R. 1030; *Supplementary Benefit Commission v Jull* [1980] 3 All E.R. 65).

“Requirements” (Mental Health Act 1959 (c.72) s.102(2)) bears a wide prima facie meaning (*Re W. (E.E.M.)* [1970] 3 W.L.R. 87).

“At the time the requirement is made” (Road Traffic Act 1972 (c.20) s.8(3)(b) as amended). “Requirement” refers back to the opening words of the subsection and means the requirement to provide a specimen of blood or urine, and not the requirement to provide a specimen of breath (*Cotter v Kamil* [1984] Crim. L.R. 569).

“Requirement or condition” (Sex Discrimination Act 1975 (c.65) s.1(1)(b)). An employee after taking maternity leave gave notice of intention to return to work on a part-time basis. The employer’s condition that she should work full-time, as did all other employees in her grade, was held to be a “requirement or condition” within the meaning of this section (*Home Office v Holmes* [1985] 1 W.L.R. 71).

“Requirements of a company’s business” (Finance Act 1972 (c.41) Sch.16 para.8(2)(a)). The purchase of a motor dealership by a manufacturer of chalkboards was a “requirement” of the company’s business for the purposes of this Schedule (*Wilson & Garden* [1982] 1 W.L.R. 1069).

“Requirement or condition” (Race Relations Act 1976 (c.74) s.1(1)(b)). These words connote a mandatory requirement which, in the employment context, constitutes an absolute bar to employment if the applicant is unable to comply with it (*Perera v Civil Service Commission (No.2)* [1983] I.C.R. 428; *Meer v Tower Hamlets LBC* [1988] I.R.L.R. 399).

“Requirement or condition” (Sex Discrimination Act 1975 (c.65) s.1(1)(b)). The need for a candidate for a job to be within a particular age range could be a “requirement” within the meaning of this section (*University of Manchester v Jones* [1992] I.C.R. 52).

Management or supervisory experience, which was a material requirement in a job, could be a “requirement or condition” within the meaning of s1(1)(b) of the 1975 Act (*Falkirk Council v Whyte* [1997] I.R.L.R. 166).

“Requirement of reasonableness”: see REASONABLENESS.

REQUIRES. “The second important matter is the English court’s understanding of what is meant by the word ‘requires’ in s.52(1)(b) of the 2002 Act. The definitive statement is to be found in *Re P (Placement Orders: Parental Consent)* [2008] EWCA Civ 535, [2008] 2 FLR 625, paras 125-126: ‘[125] ... It is a word which was plainly chosen as best conveying, as in our judgment it does, the essence of the Strasbourg jurisprudence. And viewed from that perspective “requires” does indeed have the connotation of the imperative, what is demanded rather than what is merely optional or reasonable or desirable. [126] What is also important to appreciate is the statutory context in which the word “requires” is here being used, for, like all words, it will take its colour from the particular context. Section 52(1) is concerned with adoption – the making of either a placement order or an adoption order – and what therefore has to be shown is that the child’s welfare “requires” adoption as opposed to something short of adoption. A child’s circumstances may “require” statutory intervention, perhaps may even “require” the indefinite or long-term removal of the child from the family and his or her placement with strangers, but that is not to say that the same circumstances will necessarily “require” that the child be adopted. They may or they may not. The

question, at the end of the day, is whether what is “required” is adoption.” (*N (Children : Adoption: Jurisdiction)* [2015] EWCA Civ 1112.)

REQUISITE. “Requisite . . . for the purposes of the authority” (Landlord and Tenant Act 1954 (c.56) s.57(1)). “Requisite” here means reasonably required for the purposes of a planned user or development. It is not necessary for the local authority to show that the re-occupation of the land for which the “requisite” certificate is issued is absolutely essential for their plans (*R. v Secretary of State for the Environment and Buckinghamshire CC, Ex p. Powis* [1981] 1 W.L.R. 584).

REQUISITES. “Requisites in form” in s.72 of the Bills of Exchange Act 1882 (c.61): see *Guaranty Trust Co of New York v Hannay & Co* [1918] 1 K.B. 43.

“Household requisite”: see *Manchester Profiteering Committee v Samuel*, 89 L.J.K.B. 684, cited HOUSEHOLD.

REQUISITION. As to conditions of sale, a “requisition” (or “inquiry”, which is synonymous) on title, is a request based on a defect in title (or its evidence) arising on the abstract; an “objection” may arise *aliunde* (per Blackburn J., *Waddell v Woolfe*, L.R. 9 Q.B. 515). See INVESTIGATING. See further TITLE.

“Requisition”, in regulations made under Emergency Powers Act 1920 (c.55): see *France, Fenwick & Co v R.* [1927] 1 K.B. 458.

“‘Requisition’ includes the taking of property in full ownership, the taking of the possession of property, and the acquisition of a right to have the property used in a particular manner without any taking of possession” (per Latham C.J., *Australasian United Steam Navigation Co v Shipping Control Board* [1946] V.L.R. b82, 85).

“Requisitioning” is not a term of art and has different meanings. Its usual meaning is nothing more than hiring without taking the property out of the owner although the owner has no alternative whether he will accept the proposition of hiring or not. It may, however, involve the taking over of the actual domination of a chattel (*The Steaua Romana* [1944] P. 43).

REREDOS. See *Re St. John, Pendlebury* [1895] P. 178; *Re St. Mark's* [1898] P. 114; *Re Barsham* [1896] P. 256. See also Cripps on Church and Clergy (8th edn), 229.

RES INTEGRA. A point not formerly decided in any court of law.

RES IPSA LOQUITUR. “[This] convenient and succinct formula possesses no magic qualities: nor has it any added virtue, other than that of brevity, merely because it is expressed in Latin” (per Morris L.J., *Judson v British Transport Commission* [1954] 1 W.L.R. 585).

“More recent authority has tended to the view that *res ipsa loquitur* is not a principle of law at all. There is no reversal of the burden of proof. The so-called *res ipsa loquitur* cases are merely cases in which, on the totality of the evidence, the court was able to make a finding of negligence. It has always been the position that courts can make findings of fact by means of inference when there is no direct evidence of the events in issue.” (*O'Connor v The Pennine Acute Hospitals NHS Trust* [2015] EWCA Civ 1244.)

RES JUDICATA. The phrase “*res judicata*” is used to include two separate states of things. One is where a judgment has been pronounced between parties and findings of fact are involved as a basis for that judgment. All the parties affected by the judgment are then precluded from disputing those facts, as facts, in any subsequent litigation between them. The other aspect of the term arises when a party seeks to set up facts which, if they had been set up in the first suit, would or might have affected the decision. This is not strictly raising any issue which has already been adjudicated,

RESALE

but it is convenient to use the phrase *res judicata* as relating to that position (*Robinson v Robinson* [1943] P. 43 at 44, per Henn-Collins J.).

This plea cannot be entertained but on the production of the record of the court on which it is founded or on some valid reason being given for its non-production. See *The Annie Johnson*, 91 L.J.P. 64.

“‘*Res judicata*’ is an omnibus term which encompasses a range of different circumstances that precludes a litigant in civil proceedings from raising for a second time issues determined, or which should have been determined, between the same parties in earlier proceedings. In a context far removed from these proceedings, namely intellectual property, the various aspects of the doctrine, or perhaps more accurately the various different rules encompassed within the term, were considered by the Supreme Court in *Virgin Atlantic Airways Limited v Zodiac Seats UK Limited (formerly known as Contour Aerospace Limited)* [2013] UKSC 46; [2014] AC 160. Lord Sumption summarised the position between [17] and [26]. Lady Hale and Lords Clarke and Carnworth agreed with his judgment. Lord Neuberger expressly agreed with these paragraphs. Lord Sumption observed that the ‘portmanteau term’ was a label which ‘tends to distract attention from the content of the bottle’.” (*Auzins v Prosecutor General’s Office of the Republic of Latvia* [2016] EWHC 802 (Admin).)

RESALE PRICE. Stat. Def., Resale Prices Act 1976 (c.53) s.11.

RESCIND. Stat. Def., Hire-Purchase Act 1965 (c.66) s.31(3).

See REVOKE; ABANDONMENT; LITIGATION; RELATING; *Re Jackson and Haden* [1905] 1 Ch. 603, and *Holliwell v Seacombe* [1905] 1 Ch. 426, both cited TITLE; UNWILLING; *Proctor v Pugh*, 127 L.T. 126.

RESCUE. “‘Rescous’, *rescussus*, is an ancient French word coming from *rescourrer* (*id est*) *recuperare*, that is, to take from, to rescue or recover. *Rescous* is a taking away and setting at liberty against law a distresse taken, or a person arrested by the process or course of law. And all is one, as to the point of the disseisin, to rescue the distresse after it is taken, and before hand to resist and withstand the taking of it; but yet it is no rescous, until it be distreyned” (Co. Litt. 160B; see hereon, *Termes de la Ley*, *Rescous*; Woodf.; Redman).

“Rescue is the act of forcibly freeing a person from custody against the will of those who have him in custody. If the person rescued is in the custody of a private person, the offender must have notice of the fact that the person rescued is in such custody” (Steph. Cr. (9th edn), 153; see further 5 Bl. Com. 131). See hereon 1 Russ. Cr. (10th edn), 56; Rosc. Cr. (15th edn), 901 et seq.; Arch. Cr. (32nd edn), 1226; cp. ESCAPE. See PRISON.

RESEARCH. Stat. Def., “includes inquiries and investigations” (Natural Environment and Rural Communities Act 2006 s.30(1)).

RESEARCH AND DEVELOPMENT. Stat. Def., s.837A of the Income and Corporation Taxes Act 1988 (c.1), inserted by s.68 and Sch.19 to the Finance Act 2000 (c.17).

Stat. Def., Income Tax Act 2007 s.1006.

RESEMBLING. “The word ‘resembling’ means made, or apparently intended, to resemble” (Steph. Cr. (3rd edn), 292; see hereon *R. v Robinson*, 34 L.J.M.C. 176).

RESERVATION. “‘Reservation’ is taken divers wayes, and hath divers natures, as sometimes by way of exception, to keepe that which a man had before in him... Sometimes a reservation doth get and bring forth another thing which was not before... And note, that in ancient time, their reservations were as well (or for the

more part) in victuals, whether flesh, fish, corne, bread, drinke, or what else, as in money, untill at the last, and that chiefly in the raigne of King Henry I, by agreement, the reservation of victuals was changed into ready money, as it hath hitherto since continued" (Termes de la Ley).

"Note a diversitie betweene an exception (which is ever of part of the thing granted and of a thing *in esse*) for which, *exceptis, salvo, præter*, and the like, be apt words; and a reservation which is alwaies of a thing not *in esse*, but newly created or reserved out of the land or tenement demised" (Co. Litt. 47A; see Co. Litt. 143A; *State v Wilson*, 42 Maine 21; see also Touch. 80, where it is said that a reservation "doth, most commonly and properly, succeed the *tenendum*, and is made by one or more of these words, *reddend'*, *reservand'*, *solvend'*, *faciend'*, *inveniend'*, or such like"). See further *Savill v Bethell* [1902] 2 Ch. 531, cited EXCEPTION.

"In considering what is required by a power of leasing, we should bear in mind that rent, heriots, suit of mill, and suit of court, are, according to the legal sense and meaning of the word, reservations. A privilege to the lessor to hawk, hunt, fish, or fowl, is not either a reservation or an exception in point of law" (Sug. Pow. (8th edn), 817; *Doe d. Douglas v Lock*, 4 L.J.K.B. 119). "It is only a liberty or licence—a *profit à prendre*—which can take effect only by grant and not by exception or reservation" (*Mason v Clarke* [1955] A.C. 778).

Therefore a leasing power "so as the accustomed yearly rents and reservations be thereby reserved", would, semble, not authorise an exception of the mines, minerals, quarries, or such like (*Doe d. Douglas v Lock*, 4 L.J.K.B. 113; see hereon Sug. Pow. (8th edn), 817, 818).

For an example of words of reservation operating as a grant, see *Wickham v Hawker*, 10 L.J. Ex. 153; on the contrary, *Sutherland v Heathcote* [1892] 1 Ch. 475, cited LIBERTY OF WORKING; see also *Pannell v Mill*, 3 C.B. 633, cited ROYALTIES.

"Implied reservation": see *Westwood v Heywood* [1921] 2 Ch. 130.

A right of way cannot, in strictness, be made the subject either of exception or reservation; it is neither parcel of the thing granted nor is it issuing out of the thing granted—the former being essential to the exception, and the latter to the reservation: see *Durham Railway v Walker*, 2 Q.B. 967; but see *Sharpe v Durrant*, 55 S.J. 423, cited PROVIDE; see further *Thelluson v Liddard* [1900] 2 Ch. 645.

See RESERVING; CONDITION.

RESERVE. A direction to "reserve" the pure personalty for a charitable bequest, implies marshalling the assets (*Miles v Harrison*, 9 Ch. 316; *Re Arnold*, 37 Ch. D. 637; 1 Jarm. (4th edn), 237, 238). Cp. EXCLUSIVELY.

Stat. Def., Companies Act 1980 (c.22) s.43.

See RESERVED BIDDING; RESERVING.

RESERVE FORCES. Stat. Def., "the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force" (Armed Forces Act 2006 s.374).

RESERVE FUND. See *Dent v London Tramways Co*, 16 Ch. D. 344. See further *Fisher v Black & White Co* [1901] 1 Ch. 174, cited AVAILABLE; *Burland v Earle* [1902] A.C. 83; *Longacre Press v Odhams Press*, 99 L.J. Ch. 479.

RESERVED BIDDING. Where conditions of sale provide that the auction is made "subject to a reserved bidding", that does not give the right to bid up to the reserve

RESERVED

price; *secus*, if the words were “a right to bid is reserved” (*Gilliat v Gilliat*, L.R. 9 Eq. 60, explaining s.5 of the Sale of Land by Auction Act 1867 (c.48)).

Sale of Goods Act 1893 (c.71) s.58: “where a right to bid is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction”.

See HIGHEST; PUFFER; WITHOUT RESERVE.

RESERVED OR CHARGED. As to what is an annual payment “reserved or charged” upon income within the meaning of s.66(2) of the Finance (1909–10) Act 1910 (c.8) see *Stocker v Inland Revenue Commissioners* [1919] 2 K.B. 702.

RESERVING; RESERVED. “‘Reserving’. Reserve commeth of the Latine word *reservo*, that is, to provide for store; as when a man departeth with his land, he reserveth or provideth for himselfe a rent for his owne livelihood. And sometime it hath the force of saving or excepting. So as sometime it serveth to reserve a new thing, namely a rent, and sometime to except part of the thing in *esse* that is granted” (Co. Litt. 142B, 143A). (But see this passage criticised in the judgment in *Doe d. Douglas v Lock*, 4 L.J.K.B. 120; see also RESERVATION. But a little further on in the judgment in *Doe d. Douglas v Lock* occurs this passage: “It may be said, however, that if the person who creates the power uses the word ‘reserving’ in such a way as to make an exception a reservation, it must be so taken; but, we think, not necessarily”.)

“Reserved” (s.8 of the Game Act 1831 (c.32)) “is not used in a technical sense; it points to an arrangement between landlord and tenant; and the game might be reserved by lease, by deed, or by parol contract” (per Lush J., *Coleman v Bathurst*, L.R. 6 Q.B. 369; Lush J. was in a minority only as to whether the agreement there amounted to a reservation).

Rent “reserved”: see *Dibble v Bowater*, 2 E. & B. 570, cited DUE. See WITHOUT RESERVE.

RESERVOIR. “Reservoirs, tanks, conduits, watercourses”, etc. (Sch.3 to the Settled Land Act 1925 (c.18)), “are such as are incidental to the use of land” (per Collins M.R., *Re Harrington*, 75 L.J. Ch. 460, cited MILL). See also WATERWORKS.

Stat. Def., Reservoirs Act 1975 (c.23) s.1.

See LAND COVERED WITH WATER; TRIBUTARY. See further *Stead v Nicholas* [1901] 2 K.B. 163, cited WATERS.

RESIDE; RESIDENCE; RESIDENT. A condition to a gift of a house that the donee take actual possession of it “as and for his residence and place of abode”, and continue, during his life, to reside therein, does not imply that the donee must continue personally to live in the house; he will satisfy the condition by keeping up the house as a place of residence in which he, and (or?) some of the members of his family occasionally dwell (*Warner v Moir*, 25 Ch. D. 605; see further 2 Jarm. (8th edn), 1536 et seq. It has however been said, “it would seem difficult to reconcile *Warner v Moir* with *Walcot v Bonfield*, 2 Eq. Rep. 758” (Watson Eq. 1246). See further *May v May*, 44 L.T. 412; *Re Wright*, 51 S.J. 47). Cp. LIVE AND RESIDE; OCCUPATION; PERSONAL OCCUPATION. Such a condition is void if it involves (1) the doing of a wrong, (2) the omission of a duty, or (3) an encouragement to either (per Parker C.J., *Mitchel v Reynolds*, 1 P. Wms. 189; *Wilkinson v Wilkinson*, L.R. 12 Eq. 604).

A condition that a beneficiary should continue to reside in Canada was held void for uncertainty (*Sifton v Sifton* [1938] A.C. 656); see also *Re Copen* [1948] Ch. 747 (personal residence was necessary); *Re Gape* [1952] 2 T.L.R. 477 (a condition of permanent residence was valid).

A power to “reside in” or “occupy” a building subject to a condition—e.g. to repair—would seem to imply that the privilege once accepted is always accepted as regards the condition; thus, where there was a power to A to occupy a mill so long as he thought proper, “he nevertheless keeping the premises in good and tenantable repair”, and A accepted, but the premises were afterwards totally destroyed by accidental fire; held, that A was liable to reinstate the premises, and to pay rent therefor in the meantime, and could not escape that liability by declining any longer to occupy (*Gregg v Coates*, 23 Bea. 33).

“Resident in the United Kingdom” (Income and Corporation Taxes Act 1970 (c.10) s.42(2)) includes a person who is resident for part of the relevant year (*Gubay v Kington* [1984] 1 All E.R. 513). A taxpayer, resident in the United Kingdom until April 3, 1978, but thereafter living and working in the United States until returning here on May 2, 1979 was not, in respect of the tax year 1978–79, “a person residing in the United Kingdom” within the meaning of s.108 of the Income and Corporation Taxes Act 1970 (c.10). Nor had he left for the “purpose only of occasional residence abroad” within the meaning of s.49 (*Reed v Clark* [1985] 3 W.L.R. 142).

A defendant corporation “resides or carries on business within the district” (R.S.C. Ord.12 r.2) although it may also be residing and carrying on business elsewhere (*Davies v British Geon* [1956] 1 Q.B. 1).

Temporary residence without domicile may be sufficient to found jurisdiction as regards a judicial separation (*Armytage v Armytage* [1898] P. 178); e.g. residence in hotels and boarding-houses whilst on temporary business (*Matalon v Matalon* [1952] 1 All E.R. 1025).

Merchant Shipping Act 1854 (c.104) s.189, see now Merchant Shipping Act 1894 (c.60) s.165: the residence of the owner or master of a ship does not include a place of occasional business (*The Blakeney*, Sw. 428).

A tent or a vehicle can be a “residence” for the purposes of s.5 of the Representation of the People Act 1983 (c.2) regardless of its standard or legality (*Hipperson v Electoral Registration Officer for the District of Newbury* [1985] 3 W.L.R. 61).

The residence of a subsidiary company in a foreign country was not residence by the parent company for the purpose of giving a foreign court jurisdiction over the parent company (*Adams v Cape Industry* [1990] Ch. 433).

To determine the ordinary residence of a company the courts consider where central management and control actually lies. So a non-trading company incorporated in Jersey with a Jersey-registered office, Jersey-resident shareholders and a Jersey board and Secretary which had operated its powers within what it conceived to be Jersey law was “ordinarily resident” outside the jurisdiction for the purposes of R.S.C. Ord.23 r.1(1)(a) (*Re Little Olympian Each Ways* [1995] 1 W.L.R. 560).

“Normal residence”: see NORMAL.

“Occupies as his residence”: see OCCUPY (11).

See also MAIN RESIDENCE.

“Resident there on the qualifying date” (Representation of the People Act 1983 (c.2) s.1(1)(a)). Seven women who camped on highway land and common land were, in the absence of injunctions requiring them to vacate, which would have made the residence unlawful, held to be resident within the meaning of this section, and therefore “entitled to vote” (*Hipperson v Electoral Registration Officer for the District of Newbury* [1985] 3 W.L.R. 61).

Stat. Def., Local Government Finance Act 1992 (c.14) s.6; Taxation of Chargeable Gains Act 1992 (c.12) s.9.

“Residing with” (Rent Act 1968 (c.23) Sch.1 para.7; Rent Act 1977 (c.42) Sch.1 para.3). To qualify as a statutory tenant by succession under this schedule a person had to show that he or she had made a home at the premises and had become a part of the household of the deceased relative. So that a woman who moved in with her mother in order to nurse her through a terminal illness, but still retained the tenancy of her own house, where her son continued to live, was held to have been “residing with” her mother within the meaning of this paragraph (*Swanbrae v Elliott* (1987) 19 H.L.R. 87; *Hildebrand v Moon* [1989] 37 E.G. 123). Where a person resided with a statutory tenant with the joint intention that that person should become a permanent member of the household, the fact that the tenant was temporarily absent for four months did not mean that the person was not “residing with” the tenant during that period (*Hedgedale v Hards* (1991) 23 H.L.R. 158).

“Resided with the tenant throughout” (Housing Act 1980 (c.51) s.30(2)(b); Housing Act 1985 (c.68) s.87) requires a connection with the property and not merely a close relationship with the tenant (*South Northamptonshire DC v Power* [1987] 1 W.L.R. 1433). For s.87 to apply the secure tenant and his successor need not have resided throughout the 12-month period in the actual premises of which the tenant was the secure tenant at the date of his death (*Waltham Forest LBC v Thomas* [1992] 3 W.L.R. 131).

“Person with whom dependent children reside” (Housing Act 1985 (c.68) s.59(1)(b)). It is not necessary for the dependent child to “reside” wholly and exclusively with the homeless person in order to fall within this section (*R. v Lambeth BC, Ex p. Vaglivello* (1990) 22 H.L.R. 393).

(Children Act (c.41) s.31(8)(b).) It was necessary to construe s.31(8)(b) as though the word “ordinarily” was expressly included between the words “not” and “reside” (*Gateshead Metropolitan BC v L.* [1996] 3 All E.R. 264).

(Income Support (General) Regulations 1987 (SI 1987/1967) reg.3(1).) “Resides with” in reg.3(1) should be given its ordinary meaning, that and the other person lived in the same residence or household and the claimant did not have to have a legal interest in the house (*Bate v Chief Adjudication Officer* [1996] 1 W.L.R. 814).

“With whom dependent children reside”: see DEPENDENT.

“Residential occupier” (Rent Act 1965 (c.75) s.30) could include a person permitted by the landowner to place his caravan on his land and reside in it (*Norton v Knowles* [1969] 1 Q.B. 572).

“Residents or inmates” (Copyright Act 1956 (c.74) s.12(7)): see *Phonographic Performance v Pontin's* [1968] Ch. 290, where it was held that visitors to a holiday camp were “residents” for the purpose of this subsection. See also PREMISES.

“Resident outside the United Kingdom” (Customs Duty (Personal Reliefs) Order 1970 art.2). For the purposes of this Order residence has the same meaning as it has in tax and electoral cases (*Brockleman v Barr* [1971] 2 Q.B. 602).

“Resides” (Firearms Act 1968 (c.27) s.26). An officer serving with the British Army in Germany who owned a house in Warwickshire did not “reside” there for the purposes of this Act as he had let it to tenants and thus had no right to occupy it himself (*Burditt v Joslin, The Times* [1981] 3 All E.R. 203).

Stat. Def., s.67 of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6) (“means habitually reside”).

“Habitual residence”: a person could be habitually resident in the jurisdiction for the purposes of s.5(2) of the Domicile and Matrimonial Proceedings Act 1973 despite being also habitually resident in another country. The test is whether residence is adopted voluntarily and for a settled purpose throughout a period apart from temporary or occasional absences (*Ikimi v Ikimi* [2001] 3 W.L.R. 672, CA).

“Resident”: for a discussion of the difficulties of using this word in a legislative context see Dennis Morris, *Statute Law Review*, 1999, Vol.20, no.2, pp.111–123.

“Residential flat”: see FLAT.

“Bona fide residence”: see BONA FIDE.

“Now resides”, “now residing”: see NOW.

“Place of residence”: see PLACE.

Stat. Def., Adoption Act 1968 (c.53) s.11; Children and Young Persons Act 1969 (c.54) s.70.

“Residential accommodation”: Stat. Def., Race Relations Act 1968 (c.71) s.7(5).

“Residential hotel”: Stat. Def., Shops Act 1950 (c.28) s.74(1).

“Residential licence”: Stat. Def., Licensing Act 1964 (c.26) s.94(2).

“Residential occupier”: Stat. Def., Rent Act 1965 (c.75) s.30(5).

“Residential premises”: Stat. Def., Landlord and Tenant Act 1954 (c.56) s.18(2).

“Residing together”; “residing with”: Stat. Def., Social Security Act 1975 (c.14) Sch.20.

“Occupying the house as his residence”: see OCCUPY.

“There is a distinction between residence and staying... [but] a child who is residing with each parent is living with each of them; he is not living with one and staying with the other.” (*Holmes-Moorhouse v Richmond upon Thames London Borough Council* [2007] EWCA Civ 970 per Moses L.J. at [55].)

Time spent in jail is not residence for purposes of deportation rules (*H.R. (Portugal) v Secretary of State for the Home Department* [2009] EWCA Civ 371).

Detention in prison is not a period of residence in the UK for the purposes of the Immigration (European Economic Area) Regulations 2006 (*H.R. (Portugal) v Home Secretary* [2009] EWCA Civ 371).

“Whether a defendant’s use of a property characterises it as his or her ‘residence’, that is to say the defendant can fairly be described as residing there, is a question of fact and degree. In the present case, the Edgware House is owned by the Appellant and his wife, and is the place where his wife, children, mother, father and sister permanently live. It is the place which the Appellant has affirmed in court proceedings is not only his ‘residence’ but his ‘home’. While such affirmation is not conclusive, it is plainly highly material. The Appellant visits that home every year to see his family, staying for not inconsiderable periods of time, as and when his work in Kenya permits him to do so. It is, in an obvious and very real sense, his ‘family home.’ Taking those facts together, it seems to me quite impossible to contend that the Appellant does not reside at the Edgware House at all.” (*Varsani v Relfo Ltd (In Liquidation)* [2010] EWCA Civ 560.)

For factors constituting residence in a country, see *Proceedings concerning Kozłowski (C-66/08)* [2009] 2 W.L.R. ECJ.

See DOMICIL; INHABITANT; OCCUPATION; OCCUPIER; PRIVATE DWELLING-HOUSE; ORDINARILY RESIDENT; HABITUAL RESIDENCE; SOLE OR MAIN RESIDENCE; NORMAL RESIDENCE; LAST KNOWN RESIDENCE.

RESIDED

RESIDED LEGALLY. In the Immigration (European Economic Area) Regulations 2000 the expression “resided legally” is to be construed in accordance with the Directive being implemented by the regulations, and therefore means something along the lines of “resided in compliance with the Directive” (*McCarthy v Home Secretary* [2008] EWCA Civ 641).

RESIDENCE. See DWELLING.

See ORDINARY RESIDENCE.

RESIDENT. “In the JM case the Court of Appeal refused to declare that ‘resident’ in s.117(3) [of the Mental Health Act 1983] means the same as ‘ordinarily resident’ in s.24 of the National Assistance Act 1948. That is not surprising because Parliament used a different formula in each Act and included in the 1948 Act both a deeming provision and a special provision for the Secretary of State to resolve disputes, neither of which is present in MHA. It might be a great deal more convenient and sensible if there were a match between the two provisions, rather than this mismatch, and at least one party in the JM case hoped to achieve such a match, but it did not succeed. In *R (Stennett) v Manchester City Council* [2002] UKHL 34 the House of Lords held that s.117 is a free-standing provision, not to be construed so as to align it with the 1948 Act. It might very well be better for the Secretary of State to be able to resolve issues of the present kind, as under the 1948 Act, rather than for it to be necessary to have recourse to the courts, with the time and expense that is inevitably involved in litigation, but that would require primary legislation.” (*Sunderland City Council, R. (on the application of) v SF* [2012] EWCA Civ 1232.)

RESIDENT LANDLORD. *Slamon v Planchon* [2004] 4 All E.R. 407, CA.

RESIDENT OF THE UNITED KINGDOM. Stat. Def., s.9(1) of the Anti-terrorism, Crime and Security Act 2001 (c.24).

RESIDENT PRIEST. A legacy to the “resident priest” of a locality comprises one whose usual residence is elsewhere but who is the duly appointed resident priest of the locality and who occasionally sleeps in the priest’s house there, which house he keeps up, and who performs many religious services in the locality (*Re Ingilby*, 89 L.T. 253, 254).

See PRIEST.

RESIDENTIAL ACCOMMODATION. “Let by him as residential accommodation” (Finance Act 1980 (c.48) s.80(1)). Accommodation provided for short-term holiday lets was “residential” within the meaning of this section (*Owen v Elliott* [1990] 3 W.L.R. 133).

“Provides . . . residential accommodation” (Registered Homes Act 1984 (c.23) s.1(1)). For the purposes of this Act “residential accommodation” was provided also to persons in residential care homes who intended staying only on a temporary basis (*Swindells v Cheshire CC* (1993) 91 L.G.R. 582). Elderly people who came with their carers only during the day to a home registered under this Act were not “resident” there (*Cotgreave v Cheshire CC* (1992) 156 J.P.N. 762).

(National Assistance Act 1948 (c.29) ss.21 and 26; National Health Service Act 1977 (c.49) Sch.8 para.2(1); Income Support (General) Regulations 1987 (SI 1987/1967) Sch.4 para.6(1).) Where a residential home was transferred from local authority control to a voluntary organisation and arrangements made for the local authority to make payments to the organisation at rates determined under the agreement, “residential accommodation” was not provided if the arrangements did not

include a provision which satisfied 1948 Act s.26(2) (*Chief Adjudication Officer v Quinn* [1996] 4 All E.R. 72 and *Steane v Chief Adjudication Officer* [1996] 4 All E.R. 83).

“Residential accommodation” was a place where a person lived and did not mean accommodation with an institutional quality or where board or other services were provided (*R. v Newham LBC, Ex p. Medical Foundation for the Care and Victims of Torture* (1998) 1 C.C.L.R. 227).

Stat. Def., Home Energy Conservation Act 1995 (c.10) s.1(1).

RESIDENTIAL CARE HOME. Stat. Def., para.23(3) of Sch.14 to the Finance Act 2000 (c.17).

Stat. Def., Income Tax Act 2007 s.198.

RESIDENTIAL ESTABLISHMENT. A club with four bedrooms ordinarily available to members and their guests was a “residential establishment” within the meaning of para.27 of the Schedule to the Wages Regulations (Licensed Non-Residential Establishments (Managers and Stewards) Order 1969 (No.655)) (*Hodges v Probert* [1976] I.C.R. 95).

RESIDENTIAL PREMISES. Stat. Def., s.48(1) of the Regulation of Investigatory Powers Act 2000 (c.23).

RESIDENTIAL PROPERTY. Stat. Def., s.92B of the Finance Act 2001 (c.9), inserted by s.110 of the Finance Act 2002 (c.23).

Stat. Def., “(1) In this Part “residential property” means

- (a) a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use, and
- (b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or structure on such land), or
- (c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b); ... (Finance Act 2003 (c.14) s.116(1)).

Stat. Def., for tax purposes, Finance Act 2004 Sch.29A para.7 inserted by Finance Act 2006 Sch.21.

RESIDENTIAL STATUS. Stat. Def., ““residential status”, in relation to an individual, means—(a) his nationality; (b) his entitlement to remain in the United Kingdom; and (c) where that entitlement derives from a grant of leave to enter or remain in the United Kingdom, the terms and conditions of that leave” (Identity Cards Act 2006 s.1(8)).

RESIDENTIAL TRIP. Stat. Def., Education Act 1996 (c.56) s.462(2).

RESIDENTS’ LOTTERY. Stat. Def., Gambling Act 2005 (c.19) Sch.11 para.12.

RESIDUARY BEQUEST OR DEVISE. See RESIDUARY GIFT; RESIDUARY LEGATEE; REST.

RESIDUARY ESTATE. “Residuary estate” (Administration of Estates Act 1925 (c.23) s.46). A surviving spouse’s rights to a statutory legacy under this section are not affected by her rights in the deceased’s estate in another country. A claim that “residuary estate” included foreign property failed (*Re Collens (Deceased)*; *Royal Bank of Canada (London) v Krogh* [1986] 1 All E.R. 611).

“The first relates to the meaning of the expression “residuary estate” in the context of clause 3.3 of the will, which provides that if Patrick should not survive Mrs Harte, then her trustees should hold her residuary estate in the manner then set out in the next

RESIDUARY

following ten sub-clauses, numbered 4.1 through to 4.10. The will makes no express reference to real property, as opposed to personal; but Miss Barton submits, and I accept, that it is inherently unlikely that Mr and Mrs Harte, who had gone to the lengths of engaging a professional to whom they gave instructions to dispose of their assets, would deliberately and purposely omit dealing with what was probably their most valuable asset, which was the family home. I am entirely satisfied that, as Miss Barton submits, although “residuary estate” is not defined, it should be regarded as comprising the whole of the estate of the testatrix after payment of her just debts, funeral and testamentary expenses. Within the notion of testamentary expenses, I am also satisfied, as a matter of construction and interpretation of the will, that the testatrix intended to include any inheritance tax payable by reason of her death.” (*Harte, Re* [2015] EWHC 2351 (Ch).)

RESIDUARY EXECUTOR. See PERSONAL ESTATE.

RESIDUARY GIFT. (Administration of Estates Act 1925 (c.23) Sch.1 Pt 2 para.2.) If a testator bequeathes legacies, and then gives all his real estate and the residue of his personal estate to X absolutely, the gift of realty is a “residuary gift” for the purpose of this paragraph (*Re Wilson, Wilson v Mackay* [1967] Ch. 53).

RESIDUARY LEGATEE. A person appointed “residuary legatee” takes all the residue of the personal estate (*Langley v Thomas*, 5 W.R. 219).

But where there is a gift of the residue and that is followed by the appointment of a “residuary legatee”, such an appointment does not revoke the prior gift of the residue the donee of which is entitled to such legacies as may have lapsed; but, semble, if the gift of the residue should lapse, in whole or in part, it, or the part lapsing, will go to the person appointed “residuary legatee”, who will take beneficially even though he be the executor (*Re Isaac* [1905] 1 Ch. 427, distinguishing *Re Jessop*, 11 I. Ch. R. 424).

If there is sufficient context in the will the words “residuary legatee” may be read as “residuary beneficiary” so as to entitle the legatee to take the undisposed-of real estate (*Re Bailey, Barclays Bank v James* [1945] Ch. 191).

Like legacy, “residuary legatee” has, prima facie, reference only to personalty (*Windus v Windus*, 26 L.J. Ch. 185; *Re Spooner*, 21 L.J. Ch. 151; *Re Morris*, 71 L.T. 179; *Hamilton v Foot*, I.R. 6 Eq. 572; *Gethin v Allen*, 23 L.R. Ir. 236; *Re Gibbs* [1907] 1 Ch. 465; *Re Stephen* [1913] W.N. 210); contextually, however, it may extend to realty (*Hughes v Pritchard*, 6 Ch. D. 24), but in that case there was a prior gift of the realty, and where there is no such a gift, *Hughes v Pritchard* is not in point (*Re Methuen and Blore*, 16 Ch. D. 696). But the contextual widening of this phrase is supplied in such a case as where a testator directed his executors to sell specified landed property, and then gave legacies and made specific devises of other landed property, and concluded, “I constitute A my residuary legatee”, and there it was held that the land not specifically devised (after satisfying the general purposes of the will) went to A, and not to the heir-at-law (*Singleton v Tomlinson*, 3 App. Cas. 404; *Re Sankey* [1889] W.N. 79; but see *Re Morris*, above). See hereon 2 Jarm. (8th edn), 991 et seq; *Re Williams, Williams v Acton*, 35 S.J. 24. See further *Re Wallace*, 33 S.L.R. 87; *Re Wightman Estate* [1945] 3 W.W.R. 14; *Re Hogg* [1944] I.R. 244.

A residuary legatee, has a proprietorship in the residue even before the residue is ascertained: see *Cooper v Cooper*, L.R. 7 H.L. 65. But see further as to rights of residuary legatee, *Barnardo's Homes v Special Income Tax Commissioners* [1921] 2 A.C. 1.

RESIDUARY PERSONAL ESTATE. See *Court v Buckland*, 1 Ch. D. 605; 2 Jarm. (8th edn), 781 et seq.

RESIDUARY TRUST FUNDS. See *Re Mellor*, 91 L.J. Ch. 393.

RESIDUE. The residue of an estate means that which remains after what has been given is withdrawn (*Re Kelly, Cleary v Dillon* [1932] I.R. 255). See REMAINDER; FREE RESIDUE; REST; SURPLUS; WHAT IS LEFT.

“A ‘residue’ of personal estate means the personal estate which remains after payment of the testator’s debts, funeral and testamentary expenses, and the costs of the administration of the estate, including the costs of an administration suit” (Dan. Ch. Pr. 842, citing *Trethewy v Helyar*, 4 Ch. D. 53; *Fenton v Wills*, 7 Ch. D. 33; *Blann v Bell*, 7 Ch. D. 382; *Re Jones*, 10 Ch. D. 40), and after payment of the legacies. See further *Re Brook*, 13 W.R. 573; *Trott v Buchannan*, 33 W.R. 339.

An appointment, of part of a fund subject to a power, to A, B, and C, each taking a separate sum, followed by an appointment to D of the “residue”, will not, under “residue”, pass either of such sums which may lapse by the death of A, B, or C, in the appointor’s lifetime (*Lakin v Lakin*, 13 W.R. 704).

A gift of “residue” following on a gift of the remainder of the testator’s estate, does not nullify that latter gift (*Kilvington v Parker*, 21 W.R. 121; *Bristow v Masefield*, 31 W.R. 88).

The “residue” of a fund means what remains after the withdrawal of a part; not a definite share of it (*Vivian v Mortlock*, 21 Bea. 252).

Bequest of “residue and remainder” of two mortgage debts: see *Re Grainger* [1900] 2 Ch. 756; reversed in House of Lords, sub nom. *Higgins v Dawson* [1902] A.C. 1, on which see *Re Glassington* [1906] 2 Ch. 305, cited REAL ESTATE.

“Residue” in the sense of an arithmetical remainder: see *Stokes v Prance* [1898] 1 Ch. 222.

As to value of “residue” for exercising a power of appointment, see *Re Milner* [1899] 1 Ch. 563; *Re Emerson* [1929] 1 Ch. 128; *Re Mellor* [1929] 1 Ch. 446.

Revocation of gift of “the residue”: see *Clarke v Butler*, 1 Mer. 304.

“Residue of my money” held to include stocks, shares, and securities for money (*Re Smith, Henderson-Roe v Hitchins*, 42 Ch. D. 303, cited MONEY). The “residue of money” held a gift of the general residue (*Re White*, 7 P.D. 65).

“Residue of the said sums”, in a settlement: see *De Lisle v Hodges*, L.R. 17 Eq. 440; cp. OVERPLUS.

A devise of “residue” of lands, though personalty was included in it, passed the fee even before s.28 of the Wills Act 1837 (c.26) (*Murray v Wise*, Pr. Ch. 264; *Tanner v Wise*, 3 P. Wms. 295; *Tilley v Simpson*, 2 T.R. 659; *Hopewell v Ackland*, 1 Com. 164).

“Keep the residue”: see KEEP.

“Residue of interest and rents”: see RENTS AND PROFITS.

“Residue of a term”: see LEASE.

See CHATELS; OUT OF THE RESIDUE; SPECIFICALLY.

RESIGNATION. “‘Resignation’, *resignatio*, is used particularly for the giving up of a benefice into the hands of the ordinary, otherwise, by the canonists, termed *renunciatio*. And though it signifie all one in nature with the word surrender, yet it is by custome restrained to the yielding up a spiritual living, and ‘surrender’ to the giving up of temporal lands into the hands of the Lord” (Cowel). See hereon Phil. Ecc. Law (2nd edn), Pt 2, Ch.13; Cripps’ Church and Clergy (8th edn).

RESIGNATION

A resignation of an office “implies that the party resigning has been elected into the office which he resigns; a man cannot ‘resign’ that which he is not entitled to” (per Cockburn C.J., *R. v Blizzard*, L.R. 2 Q.B. 57).

As to whether a public officer can resign without the assent of the person or body who appointed him, and as to what may be a resignation by him, see *R. v North Dublin Union* [1902] 2 I.R. 412. See *Stephenson v London Joint Stock Bank*, 20 T.L.R. 8, cited RETIRE.

“1. The issue in this appeal concerns the meaning of the word ‘resignation’ as that term is used in the rules (the ‘rules’) of the Principal Civil Service Pension Scheme (‘PCSPS’). . . .

25. Leaving the wording of the introduction to r.3.11 to one side, it seems to me that there are clear indications that rules 3.11 and 3.12 are concerned with both voluntary and involuntary departure from the Civil Service. I say that for the following 5 reasons:

i) First and foremost, the term ‘resignation’ is defined in r.1.13 as meaning ‘termination of service or voluntary retirement from the Civil Service before pension age’. Had the words ‘termination of service’ been intended to be limited to voluntary termination, it would have been easy to move the word ‘voluntary’ to qualify both ‘termination of service’ and ‘retirement from the Civil Service before pension age’. Moreover, there is, as the judge herself acknowledged, nothing to prevent a draftsman defining a narrow term as having a broad meaning. As Mr Cheetham said, ‘black’ can, if desired, be defined to mean or include ‘white’.

ii) Rule 3.12 is the rule that makes the pension age 60 for those covered by r.3.11, yet it expressly excludes those who have retired early under the Compensation Scheme, which is the method by which prison staff would have been made redundant. If the draftsman did not think that ‘resignation’ *prima facie* included both voluntary and involuntary methods of termination, this exclusion would have been unnecessary.

iii) Rule 3.14 allows a preserved pension to be brought into immediate payment if the person suffers an illness that would have led to retirement on medical grounds had they remained in the Civil Service. One of the pre-conditions in rule 3.14 is that the person has ‘left the service’. The formulation is apt to describe either a voluntary or an involuntary departure, providing some indication that the rules under the heading were concerned with both.

iv) Rule 3.10a allows a person, who is eligible for a preserved pension under r.3.11, to opt for a pension at any time after age 50 (for pre-Fresh Start employees) subject to an actuarial reduction. The words used to describe the termination of the relevant service are, however, instructive. They say that the rule applies ‘[w]here a civil servant . . . ceases to be a civil servant’. The concept of ceasing to be a civil servant is apt to include those who have left either voluntarily or involuntarily.

v) Under the ‘dismissal’ heading, rule 3.18a provides that a civil servant who is dismissed will be awarded the same benefits ‘as if he had resigned voluntarily’. This formulation provides a pointer to the fact that the draftsman must have thought it possible to ‘resign’ involuntarily; otherwise, the word ‘voluntarily’ would have been superfluous.

26. Standing back from this construction, it seems to me that, even if the definition of ‘resignation’ in r.1.13 were ambiguous, which I do not think it is, it makes business sense to think that the draftsman would have wanted to make provision somewhere for involuntary departures from Civil Service employment. I accept that transfers of

undertakings out of the public sector may have been infrequent in 1972, but that does not mean that the draftsman did not contemplate involuntary departures. He clearly did. There is no reason in the rules to think that he was making provision for what should happen on dismissal or redundancy but not for any other kind of involuntary departure. Whilst s.71 of the Pension Schemes Act 1993 protecting short service benefit had not yet been enacted in 1972, it would be strange if the draftsman had not considered the need to do so in all reasonably conceivable circumstances.” (*Ellis v Cabinet Office* [2015] EWCA Civ 252.)

Cp. RENUNCIATION.

RESOLUTION. The words “ordinary resolution” (Companies Act 1948 (c.38) s.184; now Companies Act 1985 (c.6) s.303) merely connote a resolution depending for its passing on a simple majority of votes cast in conformity with the articles of association; they do not connote a resolution passed by a majority of members. Accordingly, the articles of association may validly attach additional votes to certain shares on certain occasions, e.g. to shares held by a director when a resolution for his dismissal has been proposed (*Bushell v Faith* [1970] A.C. 1099).

Resolution of a municipal corporation to grant a lease: see *Drogheda v Holmes*, 5 H.L. Cas. 460.

“Order, resolution, deliverance or act”: see ORDER.

Stat. Def., Bankruptcy Act 1883 (c.52) s.168.

RESORT. “To resort” to a place, e.g. s.1 of the Betting Act 1853 (c.119), means physically to go to a place other than your own in the sense of frequenting it; sending letters and telegrams to a place is not “resorting” thereto (*R. v Brown* [1895] 1 Q.B. 119; cp. BROTHEL). So, one member of a club betting with other members on the club premises did not “use” the club for “betting with persons resorting thereto”, within ss.1 and 2, 1853 Act (*Downes v Johnson* [1895] 2 Q.B. 203). See *Murphy v Arrow* [1897] 2 Q.B. 527, cited FOUND. See further *R. v Russell*, 69 J.P. 247; cp. *Lang v Walker*, 40 S.L.R. 284, cited FREQUENT; *Taylor v Monk* [1914] 2 K.B. 817.

(Betting and Gaming Duties Act 1981 (c.63) s.26(3).) A person “resorted to premises” from the moment of entry and including the period of time spent on the premises (*R. v Customs and Excise Commissioners, Ex p. Ferrymatics*, *The Times*, February 23, 1995).

“Open, keep, or use”: see USE.

“Place of resort”: see PLACE.

RESOURCE ACCOUNTS. This is the new name for appropriation accounts, the accounts which each government department is obliged to present to Parliament each year.

Stat. Def., s.5(1) of the Government Resources and Accounts Act 2000 (c.20).

RESOURCES. “Resources” (Housing Act 1957 (c.56) s.42(1)(a)(ii)) was not restricted to cash resources but included credit in the world, ability to borrow, etc. (*Goddard v Minister of Housing and Local Government* [1958] 1 W.L.R. 1151).

In calculating an applicant’s “resources” for the purposes of the Ministry of Social Security Act 1966 (c.20) Schs 2 and 4, and the Supplementary Benefits Act 1976 (c.71) Sch.1 Pt III, the supplementary benefits commission was right in including, for a particular week, one fifty-second part of a student’s grant, even though he had by then spent it all (*R. v Preston Supplementary Benefits Appeal Tribunal, Ex p. Moore*; *R. v Sheffield Supplementary Benefits Appeal Tribunal, Ex p. Shine* [1975] 1 W.L.R. 624); but wrong in taking into account the ability of a son or son-in-law to provide

RESPECT

financial assistance (*R. v West London Supplementary Benefit Appeal Tribunal, Ex p. Clarke* [1975] 1 W.L.R. 1396). In another case involving a student it was held that a regular cash allowance from a parent or the regular provision for him of maintenance in the family home during vacations were part of the student's "resources", but it is open to the student to satisfy the commission that his parents either could not or would not provide the parental contribution element of his annual grant (*R. v Barnsley Supplementary Benefits Appeal Tribunal, Ex p. Atkinson* [1977] 1 W.L.R. 917). "Resources", for the purposes of assessing supplementary benefits, did not include arrears of maintenance paid to a mother as a lump sum, and a direction of the Commission that the sum should be spread over future weeks was held to be wrong in law (*R. v West London Supplementary Benefits Appeal Tribunal, Ex p. Taylor* [1975] 1 W.L.R. 1048). But wages paid in arrear were held to be present income and therefore "resources" for the purposes of this Act (*R. v Manchester Supplementary Benefits Appeal Tribunal, Ex p. Riley* [1979] 1 W.L.R. 426). A month's wages paid, as was usual, half in arrear and half in advance to a fireman the day after he went on strike was held to be part of his "resources" when assessing supplementary benefit for his wife and children (*R. v Supplementary Benefits Commission, Ex p. Fordham* [1981] 1 W.L.R. 28).

"Financial resources" (Matrimonial Causes Act 1973 (c.18) s.25(1)(a)). The "single-parent" allowance is, like any other state benefit, a financial resource for the purposes of this section (*Walker v Walker* (1982) 12 Fam. Law 122). A husband's share in the proceeds of sale of the former matrimonial home was not part of his "financial resources" within the meaning of this section (*Griffiths v Griffiths* [1984] 2 All E.R. 626).

The "resources" of a family for the purposes of s.1(2) of the Family Income Supplement Act 1970 (c.55) is to be arrived at before deduction of tax but after deduction of the expenses that were allowable in arriving at the taxable sum (*Chief Adjudication Officer v Hogg, The Times*, June 11, 1985).

"Other financial resources": see FINANCIAL.

"Actual resources": see ACTUAL.

Stat. Def., Shipbuilding Industry Act 1967 (c.40) s.12(1); Social Security Act 1973 (c.38) s.59(1); Social Security Pensions Act 1975 (c.60) s.66.

Stat. Def., "includes—(a) funds (including payment for the provision of services or facilities), (b) assets, (c) professional skill, (d) the grant of a concession or franchise, and (e) any other commercial resource" (para.8 of Sch.2A to the Insolvency Act 1986 (c.45), inserted by Sch.18 to the Enterprise Act 2002 (c.40)).

Stat. Def., "includes funds, assets, professional skills and any other kind of commercial resource" (s.17(4) of the Government Resources and Accounts Act 2000 (c.20)).

See SCARCE RESOURCE.

RESPECT. A payment made for the purchase of the goodwill of a business was not in respect of the grant of a tenancy within s.1(5) of the Landlord and Tenant (Rent Control) Act 1949 (c.40) (*R. v Barnet, etc. Rent Tribunal, Ex p. Millman* [1950] 2 K.B. 506); nor was a payment for work done (*R. v Fulham, etc. Rent Tribunal, Ex p. Philippe* [1950] 2 All E.R. 211).

See also IN RESPECT OF.

RESPECTABLE. See RESPONSIBLE.

RESPECTABLE AND RESPONSIBLE.

“The expression ‘respectable and responsible’ in relation to a proposed sub-tenant or assignee is frequently used in commercial leases and has a long history. . . .

It seems to me that there is merit in adopting the defender’s two-stage approach: in other words, to address first the question whether a proposed sub-tenant is respectable and responsible. . . .

The question is one of the proper construction of that expression, having regard to the relevant surrounding circumstances, being the circumstances which were reasonably within the knowledge of the parties to the lease at the time when it was granted. In my opinion, the parties to the lease must be taken to have been aware when they included this commonly-used expression in sub-paragraph 16.3 that it had been the subject of interpretation by the courts. They would be aware that ‘respectability’ had been held to refer to the manner in which the company in question conducted its business and to its reputation (*Wilmott*, per Cozens-Hardy MR at 531) and that ‘responsibility’ had been held to refer to financial capacity (*ibid*, per Farwell LJ at 537). In my opinion, the defender is well founded in its submission that these characteristics must be borne by the particular entity proposed as a sub-tenant. I consider this to be more obviously the case with regard to responsibility. By using the word ‘responsible’ in sub-paragraph 16(3), the parties agreed, in my opinion, that the landlord would be entitled to be satisfied as to the financial solidity of any proposed sub-tenant. It is not unheard of for one of the members of a group of companies to become insolvent while others survive; nor is it improbable that a company owned and directed by an individual would suffer insolvency yet that the owner and other corporate entities owned and controlled by him would continue to trade successfully. In my opinion a landlord who stipulates that a proposed sub-tenant must be responsible is reserving to himself the right to be satisfied as to the financial soundness of the sub-tenant itself and not as to the soundness of individuals or entities who might or might not provide assistance in the event of financial difficulty. So far as respectability is concerned, it may be that little should be required to satisfy the landlord, but once again I consider that evidence of respectability should relate to the proposed sub-tenant itself. A company does not acquire respectability automatically along with its certificate of incorporation, although it may not be long before its mode of carrying on business affords sufficient indication that it could not reasonably be regarded as anything other than respectable. That is not, in my view, the same as an assessment of the respectability of the company’s owners or of other companies in common ownership.” (*Burgerking Ltd v Castlebrook Holdings Ltd* [2014] ScotCS CSOH 36.)

RESPECTIVE; RESPECTIVELY. “Respective” and “respectively” are words of severance. Occurring in a testamentary gift to more persons than one, their effect is “to sort out” the devisees or legatees so that they take as tenants in common (*Re Moore*, 31 L.J. Ch. 368; wherein Wood V.C. explained his own decision in *Re Hodgson*, 1 K. & J. 178; see also *Sutcliffe v Howard*, 38 L.J. Ch. 472; *Ive v King*, 21 L.J. Ch. 560; *Davis v Bennett*, 31 L.J. Ch. 337; see further 3 Jarm. (8th edn), 1794). But a devise to S.M. for life, remainder to the children of her body and the heirs of their “respective” bodies, creates a joint tenancy in the children and several inheritances in tail (*Ex. p. Tanner*, 24 L.J. Ch. 657); in which case it was also held that a tenancy in common in the children would have been created, if the devise had been to the children and the heirs of their bodies “respectively”, because in that case the word “respectively” would have had reference to the whole estate. See further *Pery v White*, 2 Cowp. 781;

RESPITE

Doe d. Patrick v Royle, 13 Q.B.D. 100; *Doe d. Littlewood v Green*, 8 L.J. Ex. 65; *Re Atkinson* [1892] 3 Ch. 52; *Vanderplank v King*, 12 L.J. Ch. 497; *Gordon v Atkinson*, 1 D.G. & S. 478, cited EACH; *Torret v Frampton*, Sty. 434.

In a power of sale to trustees “and their respective heirs and assigns”, “respective” was rejected as surplus age, so that surviving trustees could make a title (*Jones v Price*, 10 L.J. 195).

“In court or in chambers respectively” (s.39 of the Judicature Act 1873 (c.66)) meant “either in court or in chambers” (*Salm-Kyrburg v Pomansky*, 13 Q.B.D. 218; *Amstell v Lesser*, 16 Q.B.D. 189). See Supreme Court of Judicature (Consolidation) Act 1925 (c.49) s.61.

“Respective owners or occupiers” (s.150 of the Public Health Act 1875 (c.55)) meant “all and every of them” (per Kekewich J., *Handsworth v Derrington*, 66 L.J. Ch. 694).

Judicature Act 1875 (c.77) s.10, incorporating into the administration of insolvent estates and the winding-up of companies the rules of bankruptcy as to the “respective rights of secured and unsecured creditors”, affected the rights of all classes of creditors *inter se* (*Re Whitaker* [1900] 2 Ch. 676; [1901] 1 Ch. 9, overruling *Re Maggi, Winehouse v Winehouse*, 20 Ch. D. 545, and followed in Ireland as to s.28(1) of the Judicature Act (Ireland) 1877 (c.57); *McCausland v O’Callaghan* [1904] 1 I.R. 376). See now Administration of Estates Act 1925 (c.23) s.34 Sch.I Pt I. See further SECURED CREDITOR; INSUFFICIENT.

Sometimes “respective” and “respectively” are read into testamentary dispositions: see AT, para.(1).

RESPITE. Respite is a delay, forbearance, or continuance, of time (Glanvil, 1. 12, c.9), e.g. as used in a copyhold admittance, “but his fealty was respited”, or to “respite” the doing of homage (Cowel, Respite of Homage), or to “respite” an appeal at quarter sessions, or “the jury is respited, through defect of the jurors” (3 Bl. Com. 354), or to “respite” execution of the judgment on a convict.

See ADJOURN. Cp. REPRIEVE.

RESPONSE ACTION. Stat. Def., Antarctic Act 2013 s.13.

RESPONDENT. Stat. Def., including a reference to defender in relation to Scotland, Equality Act 2006 s.68(5)(b).

RESPONDENTIA. See BOTTOMRY BOND.

RESPONSIBILITY. As to the responsibility of a bailee, see *Engel v Lancashire & General Assurance Co Ltd*, 41 T.L.R. 408.

(Law Reform (Married Women and Tortfeasors) Act 1935 (c.30) s.6(2)). As to contribution recoverable from a negligent person according to his “responsibility” for the damage done, see *Weaver v Commercial Process Co*, 63 T.L.R. 466; *Lavender v Diamints* [1949] 1 K.B. 585.

“Responsibilities” of a tenant within the Agricultural Holdings Act 1948 (c.63) s.57(1) cannot be construed as including an obligation which under the contract of tenancy, the landlord has himself undertaken to perform (*Barrow Green Estate Co v Walker’s Executors* [1954] 1 W.L.R. 231).

“Assumed responsibility” (Matrimonial Proceedings (Magistrates’ Courts) Act 1960 (c.48) s.2): see *Bowlas v Bowlas* [1965] P. 450, cited ACCEPT.

RESPONSIBLE. A condition which exonerates a carrier from being “responsible” for an article extends to its damage as well as to its loss (*Pratt v South Eastern Railway* [1897] 1 Q.B. 718; *Van Toll v South Eastern Railway*, 31 L.J.C.P. 241).

When a clause in a lease (against assignment without consent) provides that consent shall not be refused to a "person of responsibility or respectability", *semble*, a municipal corporation is not a "person" within the provision (*Harrison v Barrow-in-Furness*, 63 L.T. 834); but see now *Willmott v London Road Car Co* [1910] 2 Ch. 525, in which the Court of Appeal held that a trading corporation may be a "respectable and responsible person" within such a clause. See further *Jenkins v Price* [1908] 1 Ch. 10, cited UNREASONABLY. See also PERSON.

"Assignment . . . to a respectable and responsible person": see *Re Greater London Properties Lease, Taylor Bros. (Grocers) v Covent Garden Properties Co* [1959] 1 W.L.R. 503, where it was held that a subsidiary company running at a profit, but owing a large sum of money to its parent company, was a "responsible person".

See INDEMNITY; UNREASONABLY.

REST. Phrases in a will dealing with the residue of a person's property—e.g. "rest", "residue", and "remainder", or either or any of such words—are not merely most comprehensive in themselves, but will frequently enlarge the scope of other words in association with them.

A residuary bequest, always (*Cambridge v Rous*, 8 Ves. 25; *Leake v Robinson*, 2 Mer. 392; *Reynolds v Kortright*, 18 Bea. 427), and a residuary devise, since January 1, 1838 (Wills Act 1837 (c.26) s.25), carries not only everything not in terms disposed of, but "sweeps in everything (but see *Springett v Jennings*, 6 Ch. 333; distinguished *Re Mason* [1901] 1 Ch. 619, affirmed in House of Lords, sub nom. *Mason v Ogden* [1903] A.C. 1) which turns out to be undisposed of" (per Wood V.C., *Bernard v Minshull*, 28 L.J. Ch. 657; see further *Re Bagot* [1893] 3 Ch. 348; *Cogswell v Armstrong*, 2 K. & J. 227; 2 Jarm. (8th edn), 947; Wms. Ex. (12th edn), 994; as to devises, Jarm (8th edn), Ch.27); except a share of the residue itself which, on failing, will go as undisposed of, unless it be the manifest intention of the testator that such lapsed share should belong to the donees of the residue (2 Jarm. (8th edn), 1031; *Re Rhoades*, 29 Ch. D. 142; *Holgate v Jennings*, 73 S.J. 303; following *Crawshaw v Crawshaw*, 14 Ch. D. 817). See further *Re Ballance*, 42 Ch. D. 62, in which last case the conflicting cases from *Humble v Shore*, 7 Hare 247, downwards are succinctly stated by Kay J.; and, probably, *Humble v Shore*, and the cases following it, may now be regarded as definitely over-ruled by *Re Palmer* [1893] 3 Ch. 369, which was followed in *Re Allan* [1903] 1 Ch. 276; see further *Re Parker* [1901] 1 Ch. 408.

So, a residuary gift may include, for all purposes, such part of a fund subject to a power of appointment as has not been appointed by the will, or of which the appointment thereby made has failed, e.g. where a testatrix, having a general power, partially exercised the power, and gave the residue of the fund to A, and then gave legacies out of her own estate, and continued: "And as to the rest and residue of my real and personal estate, I devise bequeath and appoint the same (subject to the payment thereof of my debts, funeral and testamentary expenses) to A", and A died in her lifetime; it was held that the residuary clause blended the residue of the appointed fund with the residue of the testatrix's own property, and that, A having died in her lifetime, the whole of the personalty so blended went to the next-of-kin of the testatrix, to the exclusion of those who (under the settlement of the appointment funds) would have taken in default of appointment (*Re Marten* [1902] 1 Ch. 314, in which case *Re Davies*, L.R. 13 Eq. 163, was considered; *Re Russell Skinner*, 68 S.J. 440). See FALL.

"All the rest" (*Attree v Attree*, L.R. 11 Eq. 280; *Dobson v Bowness*, L.R. 5 Eq. 404), or "the rest and residue" (*Smyth v Smyth*, 8 Ch. D. 561), may very well include and

pass realty, even though found in association with words relating to personality. In the latter case a gift of “my sheep and all the rest, residue, moneys, chattels, and all other my effects” was held (by Malins V.C.) to pass realty. But in *Doe d. Hurrell v Hurrell*, 5 B. & Ald. 18 (cited *ETATE AND EFFECTS*), a gift of “all the rest and residue of my estate” was, on the context, confined to personality. See hereon *Marhunt v Twisden*, Gilb. Eq. Rep. 30; *Murray v Wise*, Pr. Ch. 264, cited *RESIDUE*; *Meeds v Wood*, 19 Bea. 215.

Where pecuniary legacies are followed by a gift (by whatever words) of the residue of the real and personal estate, such residue is a mixed fund on which the legacies are charged proportionally and rateably (*Greville v Brown*, 7 H.L. Cas. 697; *Gainsford v Dunn*, L.R. 17 Eq. 405; *Re Bawden* [1894] 1 Ch. 693). As to working out proportion of liability for debts between such a residuary donee and specific legatees, see *Raikes v Boulton*, 29 Bea. 41; *Re Saunders-Davies*, 34 Ch. D. 482; *Re Bawden*, above.

“All the rest of my money, however invested”: see *Re Pringle*, 17 Ch. D. 819. See further *Re Bramley* [1902] P. 106, cited *MONEY*.

“Rest of my residuary estate”: see *Re Judkin*, 25 Ch. D. 743, cited *SEVERANCE*.

As to the efficacy of “all the rest” to pass the legal estate, see *Re Brown and Sibly*, 24 W.R. 782.

A rest, in taking an account, is a pause at which the net balance between receipts and expenses is ascertained, so that interest may be abated or charged according to the finding; e.g. as between mortgagee in possession and his mortgagor, to reduce the principal on which interest is thenceforth to be debited, or (if it be shown that the principal has been more than paid) to charge the mortgagee with interest on the excess: see “Taking Accounts with Rests”, Fisher; see hereon *Wrigley v Gill* [1906] 1 Ch. 165; *Ainsworth v Wilding* [1905] 1 Ch. 435.

Rests as between a purchaser who has been let into possession and his unpaid vendor: see *Donovan v Fricker*, Jacob 165; *Neesom v Clarkson*, 4 Hare 104; *Patch v Wild*, 7 Jur. N.S. 1181.

As between tenant for life and remainderman: see *Re Chesterfield*, 24 Ch. D. 643.

“Home of rest for lady teachers”; home for “lady teachers in need of rest”: see *Re Estlin*, 72 L.J. Ch. 687, cited *HOME*.

See *RESIDUE*; *REMAIN*; *ALL*.

REST PERIOD. “Daily rest periods” (Council Regulation (EEC) No.543/69 art.14(2)). Where a driver was employed to drive heavy goods vehicles two or three evenings weekly, and during the normal working day was employed as a heavy good vehicle driving instructor, his periods as an instructor were not “rest periods” from his time as a driver (*Pearson v Rutterford* [1982] R.T.R. 54).

(Transport Act 1968 (c.73) s.95.) A driver who worked overtime, although not driving, worked during a daily working period and not a “rest period” (*Prime v Hosking*, C.O. 2703/94, DC December 12, 1994).

The concept of a rest period for the purposes of Directive 93/104 is a concept of Community law requiring to be defined by reference to the Directive. (*Landeshauptstadt Kiel v Jaeger* [2003] 3 C.M.L.R. 16, ECJ).

“As I have already explained (see para.21, above), I do not think that the quality of the periods that are set aside during each cycle determines whether the minimum requirements have been satisfied. I accept that the purpose of the entitlement to annual leave is to enable the worker to rest and enjoy a period of relaxation and leisure, as the ECJ has repeatedly made clear. But the WTD has met that purpose by laying down the

minimum periods of rest that must be given in each cycle. As the ECJ said in Gomez [2005] ICR 1040, para.30, the fact that rest means actual rest is demonstrated by the rule that it is only where the employment relationship is terminated that art.7(2) permits an allowance to be paid in lieu of paid annual leave. But the ECJ has not said that a pre-ordained rest period, when the worker is free from all obligations to the employer, can never constitute annual leave within the meaning of that article. I would hold therefore that 'rest period' simply means any period which is not working time: see art.2. 'Any period' includes every such period irrespective of where the worker is at that time and what he is doing, so long as it is a period when he is not working. I think it is plain that any period when the appellants are on field break onshore will fall into that category." (*Russell v Transocean International Resources Ltd (Scotland)* [2011] UKSC 57.)

See WORKING TIME.

RESTATE. Stat. Def., "to 'restate' an enactment means to replace it with alterations only of form or arrangement (and for these purposes to remove an ambiguity is to make an alteration other than one of form or arrangement)" (Legislative and Regulatory Reform Act 2006 s.3(5)).

RESTAURANT. See *Lorden v Brooke Hitching* [1927] 2 K.B. 237.

"The carrying on of a restaurant" (Landlord and Tenant Act 1954 (c.56) s.43 as substituted by the Finance Act 1959 (c.58) s.2(6) and para.5 of Sch.2). Where the tenant of a public house provided the facilities of a restaurant he was "carrying on" a restaurant within the meaning of this section, so that the tenancy was one to which Pt II of the 1954 Act applied (*Taylor v Courage* [1993] 44 E.G. 116).

RESTITUTION. "'Restitution, *restitutio*', is the yielding up again, or restoring, or any thing unlawfully taken from another. But it is most frequently used in the common law for the setting him in possession of lands or tenements that hath been unlawfully disseised of them" (Cowel).

Restitutio in integrum: see *Western Bank of Scotland v Addie*, L.R. 1 H.L. Sc. 145; *Adam v Newbigging*, 13 App. Cas. 308. "Restitution *in integrum* is a phrase which is properly applied when you wish to express the condition which is imposed upon a person seeking to rescind a contract": see per Lord Dunedin in *Admiralty Commissioners v SS Valeria* [1922] 2 A.C. 242, cited DAMAGE BY COLLISION.

"Writ of restitution": see *R. v London*, L.R. 4 Q.B. 371; sub nom. *Walker v London*, 38 L.J.M.C. 107.

RESTORE. "Restored to . . . lawful possession or custody" (Theft Act 1968 (c.60) s.24(3)). Where a constable, seeing an unattended car which contained packages of clothing which he suspected, and which subsequently proved to be stolen, immobilised the car; it was held that it depended on the intention of the constable as to whether his action constituted a restoration of the goods to lawful custody (*Att-Gen's Reference No.1 of 1974* [1974] Q.B. 744).

An obligation to "restore" a road interfered with under compulsory powers, semble, is to make it as nearly as possible identical with the road before the interference (*R. v Birmingham & Gloucester Railway*, 2 Q.B. 47).

See MAKE GOOD; RESTITUTION.

RESTRAINING NOTICE. See stop order, under STOP.

RESTRAINT

RESTRAINT. “‘Restraint’, in a marine insurance, is the preventing the goods from being got away without laying hands upon them” (per Brett J., *Rodocanachi v Elliott* (1872–73) L.R. 8 C.P. 649). See hereon criticism by Cave J., *Johnston v Hogg*, 52 L.J.Q.B. 343.

Stipulations in restraint of the use of premises are to be construed precisely; the parties “must make their covenants express, so as to state what they really mean; and they cannot get a court of law or of equity to supply something which they have not stipulated for, in order to get a benefit which is supposed to have been intended” (per James L.J., *Kemp v Bird*, 5 Ch. D. 976, cited by Romer L.J., *Brigg v Thornton* [1904] 1 Ch. 395). See this last case, cited LET.

“Restraint of marriage”: see MARRIAGE.

See RESTRAINTS OF KINGS.

RESTRAINT OF TRADE. “Any contract which interferes with the free exercise of his trade or business, by restricting him in the work he may do for others, or the arrangements which he may make with others, is a contract in restraint of trade. It is invalid unless it is reasonable as between the parties and not injurious to the public interest” (per Lord Denning in *Petrofina (Great Briatin) v Martin* [1966] Ch. 146).

Though contracts in restraint of trade were at first a horror to the Bench, so much so that when one was produced to Hull J. he declared it contrary to the common law and swore that had the plaintiff been present he would have sent him to prison until he had paid a fine to the King (2 Hen. 5, fol. 5, pl. 26), yet now the rule is to construe the contracts and see if they are reasonable under all the circumstances of each particular case; if so, the restraint may extend over the whole life of the contractor (per Chitty J., *Mills v Dunham* [1891] 1 Ch. 576), and it may extend over the whole world, if (in the altered circumstances of modern times and the nature of the business) such a restriction is reasonably required for the protection of the contractee and is not injurious to the public (*Nordenfelt v Maxim Nordenfelt Co* [1894] A.C. 535, which case see [1893] 1 Ch. 630, for a luminous review of the previous authorities by Bowen L.J., whose remarks were afterwards, in the House of Lords, criticised by Lord Macnaghten).

The question of reasonableness, in this confection, is, and always has been, one for the court and not for the jury; but disputed facts are for the jury (*Dowden v Pook* [1904] 1 K.B. 45). See also *Watson v Prager* [1991] 1 W.L.R. 726.

As to severing where the restraint is partly good and partly bad, see per Willes J., *Pickering v Ilfracombe Railway*, L.R. 3 C.P. 250; *Underwood v Parker*, above; *Hooper v Willis*, above; *Bromley v Smith*, above; *Putzman v Taylor* [1927] 1 K.B. 741, and cases cited.

See CARRY ON; GOODWILL; NEIGHBOURHOOD; USUAL.

RESTRAINT ON ALIENATION. The tradition of a husband preventing his wife from anticipating her inheritance and transferring property which she expected to inherit from him was abolished by the Married Women (Restraint upon Anticipation) Act 1949 (c.78).

RESTRAINTS OF KINGS. “The words ‘arrests, restraints, and detainments, of all kings, princes, and PEOPLE’ (in a marine insurance), are properly applicable only to the ruling power of a country, and not to pirates or any other lawless power (*Nesbitt v Lushington*, 4 T.R. 783). They apply, however, not only to hostile acts, but also to those which are committed by the government of which the assured is a subject; as, for instance, to the seizure of the vessel by the owner’s government for the purpose of

using her as a fire-ship (*Green v Young*, 2 Raym. Ld. 840), or to the wrongful seizure of an English ship and cargo by a British ship of war (*Lozano v Janson*, 28 L.J.Q.B. 337; see also *Stringer v English & Scottish Marine Insurance*, L.R. 5 Q.B. 599) or to an embargo, for a temporary purpose, by a friendly government (*Aubert v Gray*, 32 L.J.Q.B. 50).

"The detention of a neutral vessel within a blockaded port is, it seems, a 'restraint of princes' within the meaning of this clause (*Geipel v Smith*, L.R. 7 Q.B. 404; *Rodocanachi v Elliott*, L.R. 8 C.P. 649; 9 *ibid.* 518)": 1 Maude & P. 488. See further *Crew v Great Western S.S. Co*, 4 T.L.R. 148.

So, though the restraint be for the due enforcement of a sanitary law—e.g. for prohibiting the importation of live cattle suspected of having cattle plague—it is such a restraint (*Miller v Law Accident Insurance* [1903] 1 K.B. 712); though if a policy contain also a warranty by the insured against "capture, seizure, and detention", the insurer will not be liable, because though such a detention would not be a "capture", it would probably be a "seizure", and would certainly be a "detention" (*Miller*).

In variance of previous decisions (see 1 Maude & P. 352), it seems now the rule that a reasonable apprehension of capture will justify delay under the usual exception in charterparties of "restraint of princes and rulers" (*The San Roman*, L.R. 5 P.C. 301; *The Heinrich*, L.R. 3 A. & E. 435; see also *Geipel v Smith* and *Rodocanachi v Elliott*, above; *Nobel Co v Jenkins* [1896] 2 Q.B. 326); "but, generally speaking, in order to justify a shipowner in putting an end to the contract voyage, there must be proof of more than a reasonable apprehension of restraint" (per Kennedy J., *Brunner v Webster*, 5 Com. Cas 174). See further *Watts & Co v Mitsui & Co* [1917] A.C. 227.

This exception has "reference to the forcible interference of a state, or of the government of a country, taking possession of the goods *manu forti*; and does not extend" to a detention under legal proceedings (per Martin B., *Finlay v Liverpool & Great Western S.S. Co*, 23 L.T. 251). See hereon Abbott; Arnould; Carver.

As regards the statutory form of a marine insurance, "'arrests, etc. of kings, princes, and people' refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process" (Marine Insurance Act 1906 (c.41) Sch.1 r.10).

The whole question of restraints of kings was very exhaustively considered in *British & Foreign Marine Insurance Co v Sanday* [1916] A.C. 650, where it was held that where these words occur in a policy of marine insurance, "restraint" does not necessarily import the use of physical force, but it is sufficient if the act alleged to be restrained is prohibited by a state having the power to enforce the prohibition. It was further held that a policy against "restraints" included a restraint imposed by the British Government on a British subject, and that after declaration of war, the inability of a ship to proceed to an enemy port without violating the common law prohibition against trading with the enemy was a "restraint of princes" within the meaning of the policy. See further *Bolckow, Vaughan & Co v Compania Nuner de Sierra Menera*, 86 L.J.K.B. 439; *Becker, Gray & Co v London Assurance Corp* [1916] 2 K.B. 156; affirmed House of Lords, *Russian Bank v Excess Insurance Co* [1918] 2 K.B. 123.

"Restraint of princes": "There may be a restraint, though the physical force of the state concerned is not immediately present. It is enough, I think, that there is an order of the state, addressed to the subject of that state, acting with compelling force on him, decisively exacting his obedience and requiring him to do the act which effectively restrains the goods" (per Lord Wright, *Rickards v Forestal Land, Timber & Railways Co* [1942] A.C. 50 at 82–83).

RESTRICT

See ENEMY; QUEEN'S ENEMIES; POLITICAL.

RESTRICT. "For the purpose of restricting or regulating the development or use of the land" (Town and Country Planning Act 1971 (c.78) s.52). A local authority was entitled to enter into a covenant under this section to restrict or to regulate the development or use of land, either permanently or for such a period as was prescribed by the agreement, even though the purpose could not be achieved by the imposition of a planning condition under s.29 of the 1971 Act (*Re L. (Minors: Parties)*, *The Times*, November 11, 1993).

Case Note: "The main issue in this appeal is whether the judge correctly construed the word 'restrict' in reg.9 of Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996. . . . Rules which prevent vehicles travelling one way or the other along a road are 'restrictions' in the ordinary meaning of that word. . . . In my view, rules which impose those requirements do 'restrict the passage of public service vehicles along a road'." (*Williams v Devon County Council* [2016] EWCA Civ 419.)

RESTRICTION. "Restrictions as to expenditure": see *R. v Plymouth* [1896] 1 Q.B. 158, cited SUBJECT TO.

"On such terms and conditions and under such restrictions": see *London CC v Bermondsey Bioscope Co*, 80 L.J.K.B. 141, cited TERMS.

"Restrictions" (Fair Trading Act 1973 (c.41) s.107(1)). Covenants in underleases of units sub-let for use as business premises were held not to be "restrictions" within the meaning of this section, even though they were restrictive in the use of the premises (*Ravenseft Properties v Director General of Fair Trading* [1977] 1 All E.R. 47).

"Restrictions imposed by law" (Income and Corporation Taxes Act 1970 (c.10) s.290(4)). Restrictions in a company's articles of association on the amount it may distribute by way of dividend are not "restrictions imposed by law" within the meaning of this section (*Noble v Laygate Investments* [1978] 1 W.L.R. 1457). The obligation by law for a company to create a share premium account in respect of shares issued at a premium on the occasion of a take-over was a "restriction imposed by law" on the distribution of dividends out of pre-acquisition profits (*Shearer v Bearcain* [1980] 3 All E.R. 295).

(Restrictive Practices Act 1976 (c.34) Sch.3 para.2(b).) The words "term" and "restriction" referred to the same matter under Sch.3 of the 1976 Act (*Associated Dairies v Baines* [1995] I.C.R. 296).

Stat. Def., Restrictive Trade Practices Act 1976 (c.34) s.43.

RESTRICTION (IN RELATION TO REGISTERED LAND). For the meaning of a "restriction" in relation to registered land see now s.40 of the Land Registration Act 2002 (c.9).

RESTRICTIONS OF COMPETITION. Clauses in franchise agreements which resulted in a division of markets between franchisor and franchisee, or between franchisees, constituted "restrictions of competition" contrary to art.85(1) of the EEC Treaty (*Pronuptia de Paris GmbH, Frankfurt am Main v Schillgallis* (No.161/84) [1986] 1 C.M.L.R. 414). A prohibition by a Member State on the distribution of information relating to the availability of abortions in another Member State was not a restriction on the freedom to provide services within the meaning of art.59 of the EEC Treaty, where that information was not distributed on behalf of an economic operator established in the second state (*Society for the Protection of Unborn Children (Ireland) v Grogan*, *The Times*, October 7, 1991).

RESTRICTIVE COVENANT. As to the principles for construing restrictive covenants in a conveyance in fee, see *Osborne v Bradley* [1903] 2 Ch. 446, and cases there cited; see also *Elliston v Reacher* [1908] 2 Ch. 665, cited INTENDED; *Torbay Hotels v Jenkins* [1927] 2 Ch. 225; see also *Formby v Barker* [1903] 2 Ch. 539; *Re Nisbet and Potts* [1906] 1 Ch. 386; *Reid v Bickerstaff* [1909] 2 Ch. 305, cited BUILDING SCHEME; cp. RUN WITH THE LAND; see further *Wilkes v Spooner* [1911] 2 K.B. 473; *Sharp v Harrison* [1922] 1 Ch. 502. As regards a lease, see *Holloway v Hill* [1902] 2 Ch. 612, cited ASSIGNS, PERMIT.

Land is "injuriously affected" by a breach of a restrictive covenant which appertains to and benefits it (*Long Eaton Recreation Grounds Co v Midland Railway* [1902] 2 K.B. 574). See Law of Property Act 1925 (c.20) s.84.

In *Wille v St. John* [1910] 1 Ch. 325, it was held that the mere registration (under s.84 of the Land Transfer Act 1875 (c.87), as amended by Sch.I of the Land Transfer Act 1897 (c.65)) did not render restrictive covenants enforceable as between purchasers *inter se* upon the footing of the land being subject to a common BUILDING SCHEME. See now on restrictive covenants, Land Charges Act 1925 (c.22) ss.10–20; see also Defence of the Realm (Acquisition of Land) Act 1920 (c.79) s.1(3); Law of Property Act 1925 (c.20) s.6.

Restrictive conditions do not generally run with chattels: see *Taddy v Sterious* [1904] 1 Ch. 354; *McGruther v Pitcher* [1904] 2 Ch. 306.

As to covenants restraining the purchaser of a car from reselling within a stipulated period, see *British Motor Trade Association v Salvadori* [1949] Ch. 556; *Hartwells of Oxford v British Motor Trade Association* [1951] Ch. 50; *Monkland v Jack Barclay* [1951] 2 K.B. 252; *British Motor Trade Association v Gilbert* [1951] 2 All E.R. 641.

See also RESTRAINT OF TRADE; COMPULSORY POWERS; RUN WITH THE LAND.

RESTS. "Taking accounts with rests": see REST.

RESULT. Where commission was payable to an agent "in the event of business resulting", there must be a contract binding on the party introduced by the agent (*Murdock Lownie v Newman* [1949] 2 All E.R. 783).

"The phrase resulting from" (Restrictive Trade Practices Act 1956 (c.68) s.21(1)(b)) is not limited to matters of physical causation, but is wide enough to embrace the natural and probable consequences of the removal of a restriction (*Re Permanent Magnet Association's Agreement* [1962] 1 W.L.R. 781).

"As a result of his death" (Fatal Accidents Act 1976 (c.30) s.4, as substituted by the Administration of Justice Act 1982 (c.53) s.3). An allowance based on the husband's pension and paid by his former employers to his widow following his death was a benefit which accrued to the widow "as a result of his death" within the meaning of this section (*Pidduck v Eastern Scottish Omnibuses* [1990] 1 W.L.R. 993).

"Obtains property as a result of" the commission of an offence (Criminal Justice Act 1988 (c.33) s.71(4)). Where the authors of a book about an escaped spy had been charged with the offence of aiding him escape, payments made to them by the publisher were (should they be found guilty) held to be property obtained "as a result of" the commission of an offence within the meaning of this section (*Re R.* [1991] C.O.D. 369).

Damages proportioned to injury "resulting" from death: see PROPORTION. "Affect the result": see AFFECT.

"Necessarily resulting": see NECESSARILY.

RESULTING

“We accept also that the expression ‘in connection with’ widens the meaning of the words ‘as a result of’: see *R v Waller* [2009] 1 Cr App R (S) No 76, at page 450. In our view, the expression was probably intended to cover the type of situation where a person obtains property in anticipation of the criminal venture. For example, suppose that A is provided with a car (which is registered in his name) by someone planning a criminal venture, ostensibly for A’s own use but really with a view to him using it also in order to act as a courier to transport illegal tobacco products for that criminal venture. In this situation it is clear that A has obtained the car in connection with his subsequent criminal conduct of transporting the illegal goods, although it may be open to argument whether he also obtained the car as a result of any criminal conduct.” (*James v R*. [2011] EWCA Crim 2991.)

RESULTING TRUST. A resulting trust is where property is ineffectually, or incompletely, conveyed, or where on a conveyance the beneficial interest in property is not completely disposed of; and accordingly the property, or the undisposed of beneficial interest in it, reverts to the person making the conveyance. It arises by implication when, e.g. the document purporting to convey the property is legally void, or conveys the property as trust property but declares no trust, or declares trusts which fail or do not exhaust the property; but in this lastly mentioned case, it has been said that “the ordinary and familiar” mode of creating a resulting trust “is by saying so on the face of the instrument” (per Halsbury C., *Smith v Cooke* [1891] A.C. 299); though that can hardly be so (*Re Abbott* [1900] 2 Ch. 326), for that would be an ultimate trust, and the dictum quoted was probably “a mere verbal slip” (8 L.Q.R. 108). See hereon *Re West* [1900] 1 Ch. 84; Lewin (15th edn), Pt 1, Ch.6; Godefroi; SUBJECT TO. See also *Re Llanover Settled Estates* [1926] 1 Ch. 626; *Re Thursby* [1910] 2 Ch. 181, cited IMPLICATION; Settled Land Act 1925 (c.18) ss.20 and 117.

So there is, prima facie, a resulting trust “to the man who advances the purchase money” when the property bought is conveyed to a stranger (*Dyer v Dyer*, 2 Cox Ch. 92). See Law of Property Act 1925 (c.20) ss.53 and 60(3).

So, where property is brought in the name of a husband but with the money of his wife, there is, prima facie, a resulting trust in favour of the wife (*Mercier v Mercier* [1903] 2 Ch. 98).

RESULTING USE. “Whenever the use limited by a deed expires, or cannot vest, it returns back to him who raised it, and is styled a resulting use” (Jacob). See hereon 2 B1. Com. 335; Wms. R.P., Pt 1, Ch.8.

RESUMPTION. “‘Resumption’ is a word used in the statute of 31 Hen. 6, c.7, and is there taken for the taking again into the Kings hands such lands or tenements as upon false suggestion or other error he had made livery of to an heire, or granted by patent unto any man” (Termes de la Ley).

“Resumption of normal use” (Town and Country Planning Act 1962 (c.38) s.13(2)). Where land was used as a golf course for 13 years, by the War Department for three years and for agricultural purposes for 20 years, re-use as a golf course was held not to be “resumption of normal use” under this section (*Kingdon v Minister of Housing and Local Government* [1968] 1 Q.B. 257).

RETAIL. “Retail sale” (Copyright Act 1956 (c.74) s.8(1)(a)). Where gramophone records could be purchased by sending in 1s. 6d. and the wrappers from three chocolate bars there was no “retail sale” within the meaning of this section because, as

the 1s. 6d. was not the whole consideration for the sale there was no "ordinary retail selling price" within the meaning of s.8(2) (*Chappell & Co v Nestlé Co* [1960] A.C. 87).

The distinctive characteristic of a retail shop is that it should be a building to which the public can resort for the purpose of having particular wants supplied and services rendered therein (*Turpin v Middlesbrough Assessment Committee and Bailey* [1931] A.C. 451).

"Retail shop" (Rating and Valuation (Apportionment) Act 1928 (c.44) s.3(4)) included a bakehouse and shop for the sale of bread and confectionery (*Finn (Wimbledon Revenue Officer) v Kerslake* [1931] A.C. 457); or cleaners (*Ritz Cleaners v West Middlesex Assessment Committee* [1937] 2 K.B. 642); it did not include a factory canteen (*Simmonds Aeroaccessories (Western) v Pontypridd Area Assessment Committee* [1944] K.B. 231); nor did it include a timber merchants who only occasionally sold small quantities of wood to the general public (*Dolton, Bournes and Dolton v Osmond* [1955] 1 W.L.R. 621). A motor service depot was a retail shop although only operating under the instructions of insurance companies (*Meriden RDC v Standard Motor Co* [1957] 1 W.L.R. 958). The fact that some retail business was conducted on a hereditament did not necessarily make it a "retail shop" within the meaning of the section (*Almond v Heathfield Laundry* [1960] 1 W.L.R. 1339).

"Retail trade or business" (Shops Act 1912 (2 & 3 Geo. 5, c.3 s.19(1)) Shops Act 1950 (c.28) s.74): see *Lucas v Reubens* [1921] 2 K.B. 482, where it was held that an auctioneer who in the ordinary course of business sells jewellery by auction does not carry on the retail business of a jeweller.

Persons who paid to gain entry to a field regularly used on Sunday for car boot sales, and there sell goods from their car boots, were not necessarily carrying on a "retail trade or business" within the meaning of the Shops Act 1950 (c.28) ss.47, 58, 59 (*Palmer v Bugler* [1989] Crim. L.R. 385). A planning permission granted for a warehouse club selling a wide variety of goods in bulk packages and in a manner genuinely designed to ensure that those eligible to use the facility were restricted to a class did not amount to permission for "retail" use (*R. v Thurrock BC, Ex p. Tesco Stores, The Times*, November 5, 1993).

(Value Added Tax Act 1983 (c.55) Sch.4 para.3.) Goods which were sent by a supplier to persons, who acted on their own account rather than as agents, some of which would be sold to customers and some of which would have been earmarked for distribution for their own use or to be given as presents, when the supplier were unaware as to which goods would be used for which purpose, were "goods to be sold by retail" and so a taxable supply (*Fine Art Developments Plc v Customs and Excise Commissioners* [1996] 1 All E.R. 888).

"Retail employment"; "retail transaction": Stat. Def., Wages Act 1986 (c.48) s.2.

"Sale by retail": Stat. Def., Licensing (Retail Sales) Act 1988 (c.25) s.1.

Stat. Def., Shops Act 1950 (14 Geo. 6, c.28) s.74; Leasehold Property (Temporary Provisions) Act 1951 (14 & 15 Geo. 6, c.38) s.20.

"Retail sale": Stat. Def., Medicines Act 1968 (c.67) s.131.

"Retail shop": Stat. Def., Capital Allowances Act 1968 (c.3) s.7(5); Finance Act 1974 (c.30) Sch.3 para.10; Development Land Tax Act 1976 (c.24) Sch.4 para.9; Capital Allowances Act 2001 (c.2) s.93(2).

"Retail trade or business": Stat. Def., Offices Shops and Railway Premises Act 1963 (c.41) s.1(3)(b).

RETAIL

“Retail trader”: Stat. Def., Finance (No.2) Act 1940 (c.48) s.41; Car Tax Act 1983 (c.53) s.3.

“Sale by retail”: Stat. Def., Beerhouses Act 1834 (c.85) s.19; Licensing Act 1872 (c.94) ss.74, 77; Spirits Act 1880 (c.24) s.104; Customs and Excise Act 1952 (c.44) s.148(4).

See TRAFFICKING; WHOLESALE.

RETAIL PRICES INDEX. Stat. Def., Finance Act 1980 (c.48) s.24(8); Finance Act 1982 (c.39) s.80(4); Finance Act 2004 (c.12) s.279.

Stat. Def., Statistics and Registration Service Act 2007 s.21; Corporation Tax Act 2009 s.1319; Corporation Tax Act 2010 s.1119.

RETAIN. A testamentary direction to “retain and set apart” a percentage of profits of a business as a reserve fund against losses and contingencies is a direction for accumulation within the Thellusson Act, and, if there be no direction for payment of debts, it is void after 21 years (*Re Cox* [1900] W.N. 89).

Where trustees have power to “retain” any part of the estate “in its present form of investment”, and part of the estate consists of shares in a company which, in order to re-arrange its capital, undergoes reconstruction which results in the ordinary course in the trustees getting new shares for the old ones, the trustees are entitled to retain such new shares (*Re Smith* [1902] 2 Ch. 667); “they are shares in another company, it is true, but the only real difference is that the corporation is a different corporation. Does that fact take these shares out of the words ‘retain in its present form of investment’? I think every case of this sort must be looked at on its merits in order to see whether the investment is the same. In the present case, I think it is. The new company is simply a reproduction, a transformation, of the old company” (per Buckley J., *Re Smith*). But see per Kekewich J., *Re Anson* [1907] 2 Ch. 424. Cp. POSTPONE.

A direction to trustees to retain a gift of stock for the benefit of the legatee for life, only means that the stock is not to be sold, and does not make the gift specific: see *Re Curry*, 53 S.J. 117.

To “retain” property means to keep it (per Patteson J., *Glaholm v Rowntree*, 6 A. & E. 717). Cp. RECOVER.

“To ‘retain’ is ‘to keep in pay’, ‘to hire’” (per Parke B., *Elderton v Emmens*, 6 C.B. 176); but not necessarily to find actual and appropriate employment; the consideration must be paid whether the person retained be employed or not: see EMPLOY. Yet, semble, “the word ‘retain’ does not necessarily show that there was a consideration” (per Ashhurst J., *Elsee v Gatward*, 5 T.R. 151).

A solicitor, though “retained” for an action, “need not be employed throughout its course” (per Truro C., *Emmens v Elderton*, 4 H.L. Cas. 629); but if there be an agreement to retain at so much per annum, that imports a retainer for one year at least (*Emmens v Elderton*, 4 H.L. Cas. 624).

As to a retainer by a local authority, see *Brooks v Torquay* [1902] 1 K.B. 601, cited SEAL.

As to an executor’s right of retainer to pay his own claim against his testator’s estate in priority to other creditors, see Wms. Exs. (12th edn), 648; *Re Giles* [1896] 1 Ch. 956; *Re Taylor* [1894] 1 Ch. 671; *Trevor v Hutchins* [1896] 1 Ch. 844; *Re Beeman* [1896] 1 Ch. 48; *Re Gilbert* [1898] 1 Q.B. 282; *Re Hayward* [1901] 1 Ch. 221; AGENT AND PATIENT; SECURED CREDITOR; TAKE AND APPROPRIATE. See further *Re Williams* [1904] 1 Ch. 52; *Re Ridley* [1904] 2 Ch. 774, approved in *Re Bennett* [1906] 1 Ch. 216. “The right of retainer is only applicable to a fund which a legal personal

representative has got in" (per Cozens-Hardy J., *Pulman v Meadows* [1901] 1 Ch. 233, citing Lindley M.R., *Re Rhoades* [1899] 2 Q.B. 347). Semble, it does exist as regards a simple contract debt as against a specialty (*Re Jennes*, 53 S.J. 376), or where the executor or administrator is an undischarged bankrupt with creditors unpaid: see *Wilson v Wilson* [1911] 1 K.B. 327. But see *Re Harris* [1914] 2 Ch. 395.

As to an executor's right to retain out of a legacy a debt due from the legatee to the testator's estate, see *Cherry v Boulton*, 9 L.J. Ch. 118; *Smith v Smith*, 31 L.J. Ch. 91; explained and distinguished in *Turner v Turner* [1911] 1 Ch. 716; *Re Savage* [1918] 2 Ch. 146. See further *Re Marvin* [1905] 2 Ch. 490. See *Re Pennington and Owen* [1925] 1 Ch. 825 (debt due to a company).

An administrator's right of retainer is the same as an executor's: see hereon **UNDULY**. See Administration of Estates Act 1925 (c.23) s.34; *Re Cockell* [1930] W.N. 165.

"Retaining wall": see *Stevens v Metropolitan District Railway*, 29 Ch. D. 60. "In *London & North Western Railway v St. Pancras* (17 L.T. 654) it was held that a retaining WALL of a railway cutting was land abutting (see **ABUT**) on a street, and liable to be charged with paving expenses. This decision was approved by Lord Watson in *Great Eastern Railway v Hackney* (8 App. Cas. 693), who said, 'It is obvious that the wall was necessary for the construction of the line and the protection of traffic upon it; and, in short, formed part of the works from which the company were deriving profit'" (per Stirling L.J., *Hackney v Lee Conservancy Board* [1904] 2 K.B. 554). But observe that the bridge and parapets in *Great Eastern Railway v Hackney* were held not to be land abutting on the street; see this last case, and *Hackney v Lee Conservancy Board*, above, and *Hornsey v Smith* [1897] 1 Ch. 843, cited **OWNER**; *Att-Gen v Hornsey BC* [1927] 1 Ch. 331.

As to the liability to repair a retaining wall by the side of a main road, or a highway, see *Att-Gen v Staffordshire CC* [1905] 1 Ch. 336.

"Retained" (Scrap Metal Dealers Act 1964 (c.69) s.2(5)). Record books of scrap metal deals do not necessarily have to be "retained" at the place where they were compiled; they may be retained at any place that the dealer wishes (*Houston (W.) & Sons v Armstrong* [1969] 1 W.L.R. 1864).

In *Roberts & Co v Marsh* [1915] 1 K.B. 42, it was held that the words "to be retained", written by the drawer on the face of a cheque merely imported a condition between drawer and drawee and did not prevent the instrument being an unconditional order to pay as regards the bankers: and that it was therefore a cheque within the meaning of the Bills of Exchange Act 1882 (c.61).

"May be retained so long as it is necessary" (Police and Criminal Evidence Act 1984 (c.60) s.22(1)). The word "retained" meant that the customs officer was entitled to keep back the produced material as against the owner for as long as permitted, and did not preclude the Commissioners for Customs and Excise from sending the material to a law enforcement agency investigating drug trafficking (*R. v Southwark Crown Court, Ex p. Commissioners of Customs and Excise* [1989] L.S.Gaz., December 6, 49).

Trust property "still retained": see **STILL**.

Pauper child under 16 to "retain" his parent's settlement: see **CHILD**.

"Assists in their retention" (Theft Act 1968 (c.60) s.22(1)): see **ASSIST**.

"Retaining wall": Stat. Def., Highways Act 1971 (c.41) s.35(9).

RETAINER (EXECUTOR). See *Att-Gen v Jackson* [1932] A.C. 365; *Re. S. P. (Deceased)* [1936] Ch. 735. The right can be exercised so as to exhaust the estate and

RETENTION

leave a creditor, who has instituted administration proceedings in ignorance of the executor's claim, to pay his own costs (*Re Wester Wemyss* [1940] Ch. 1). The right can only be exercised in respect of debts due to the executor beneficially (*Re Rudd* [1942] Ch. 421). See also *Wms. Exors.* (13th edn), 494.

RETENTION. "The removal or the retention of a child": see REMOVAL.

"It may be helpful if I were to say something about the use of the word 'retention'. It is a word to be used with care: McBryde, *The Law of Contract in Scotland* 3rd ed, (2007), para.20–62. This is because it tends to be used to describe a variety of remedies, each with different rules attached to them. This has given rise to a good deal of confusion, with the result that it is not always easy to find clear guidance for the application of each remedy in the authorities. In a footnote to a paragraph which precedes the passage which I have just referred to, McBryde states that confusion is endemic in this area of the law: para.20–61, fn 21. In simple terms, what Tullis Russell seek to do is to withhold, or 'retain', payment of the sum sued for by Inveresk when the amount due to them has been ascertained, pending the ascertainment of their claim of damages so that, when it has become liquid, they may set off the amount of that claim against the sum payable to Inveresk. As a general rule payment of a debt which has been found to be due and payable cannot be withheld on a plea of retention in respect of a claim which is still illiquid. But Tullis Russell seek to rely on an exception to that rule which applies where the illiquid claim arises directly out of the same contract. The obligation to pay the sum found to be due and payable to Inveresk will not be extinguished, but postponed. It may ultimately be extinguished, however, on the principle known as compensation should it be found that the amount due as damages equals or exceeds the amount due as Additional Consideration to Inveresk. Retention and compensation are sometimes confused with each other, but they are different remedies. As McBryde, *The Law of Contract in Scotland*, para.20–64 explains, retention does not operate to extinguish claims, whereas compensation when pled and sustained does have this effect. As matters stand in this case, compensation lies in the future. The issue at this stage is whether Tullis Russell are entitled to exercise the remedy of retention. Their case for its exercise rests on the mutuality of contractual obligations." (*Inveresk Plc v Papermakers Ltd* [2010] UKSC 19.)

RETENTION NOTICE. Stat. Def., Data Retention and Investigatory Powers Act 2014 s.1.

RETIRE. "If an acceptor 'retires' a bill at maturity, he takes it entirely from circulation, and the bill is, in effect, paid; but if an indorser 'retires' it, he merely withdraws it from circulation in so far as he himself is concerned, and may hold the bill with the same remedies as he would have had, had he been called upon in due course, and had paid the amount to his immediate indorsee" (per Jervis C.J., *Elsam v Denny*, 23 L.J.C.P. 190; see on this case *Bell v Buckley*, 11 Ex. 631).

"Retire from a partnership": see WITHDRAW.

RETIREMENT. For the purposes of a pension fund rule, termination of employment by dismissal could still constitute "retirement from the service by reason of incapacity" (*Harris v Lord Shuttleworth (Trustees of the National & Provincial Building Society Pension Fund)*, *The Independent*, November 26, 1993).

The word "retirement" in reg.49 of the Income Tax (Employment) Regulations 1993 is to be construed in light of the meaning of "service" and requires a cessation of service (*Venables v Hornby (Inspector of Taxes)* [2002] EWCA Civ 1277; [2002] S.T.C. 1248, CA).

“Provision in relation to . . . retirement”: see IN RELATION TO.

RETIREMENT INCOME. Stat. Def., Pension Schemes Act 2015 s.7.

RETIREMENT LUMP SUM. Stat. Def., Pension Schemes Act 2015 s.7.

RETIREMENT PENSION INCOME. Stat. Def., s.16 of the State Pension Credit Act 2002 (c.16).

RETIREMENT PROVISION. Stat. Def., s.7(6) of the State Pension Credit Act 2002 (c.16).

RETIRING AGE. See NORMAL.

RETIRING TRUSTEE. “Trustees by paying money into court retire from their trust, and cannot thereafter exercise the powers of the trust” (Lewin (15th edn), 276, citing *Re Coe*, 4 K. & J. 199; *Re Williams*, 4 K. & J. 87; *Re Tegg*, 15 L.T. 236; *Re Nettlefold*, 59 L.T. 315; *Re Mulqueen*, 7 L.R. Ir. 127). See also DECLINING TRUSTEE.

A trustee who has been removed against his will is not a “refusing or retiring trustee” within s.26(8) of the Trustee Act 1925 (c.19) (*Re Stoneham Settlement Trusts*, *Popkiss v Stoneham* [1953] Ch. 59).

RETRACT. “A condition of sale that no person shall retract his bidding was originally suggested to me by the case of *Payne v Cave* (3 T.R. 148), and it has now become a common condition. But I always thought it one that could not be enforced. In *Jones v Nanney* (13 Pr. 99), Mr Baron Wood suggested the difficulties . . . But such a condition in a sale by order of the court is binding on the persons who consent to the sale, and upon their agents (*Freer v Rimmer*, 14 Sim. 391)” (Sug. V. & P. (8th edn), 14).

Retraction of renunciation of probate: see *Re Striles* [1898] P. 12; *Re Thacker* [1900] P. 15.

RETROACTIVE. See RETROSPECTIVE.

RETROSPECTIVE. “*Nova constitutio futuris formam imponere debet, non præteritis*” (2 Inst. 292), i.e. unless there be clear words to the contrary, statutes do “not apply to a past, but to a future, state of circumstances” (per Alderson B., *Moon v Durden*, 2 Ex. 40); see further *Re Chapman* [1896] 1 Ch. 323, cited SHALL. See hereon BROUGHT; HAS BEEN; IS; MAINTAIN; SHALL HAVE BEEN; Maxwell, Ch.8, s.4; Broom’s Maxims, Ch.1, s.2.

Alterations of procedure are generally retrospective: see hereon *R. v Dharma* [1905] 2 K.B. 335.

Retrospective operation of statutes: see per Cozens-Hardy M.R. in *West v Gwynne* [1911] 2 Ch. 1, cited FINE. See also *Re Welsh Anthracite Collieries* [1950] Ch. 18; *Master Ladies’ Tailors Organisation v Minister of Labour and National Service* [1950] 2 All E.R. 525; *Att-Gen and Newton Abbott Rural DC v Dyer* [1947] Ch. 47; *Smedley v Moira Coliery* [1948] W.N. 467; *Hutchinson v Jauncey* [1950] 1 K.B. 574; *Jonas v Rosenberg* [1950] 2 K.B. 52; *Howell v Falmouth Boat Construction Co* [1951] A.C. 837; *Ransom and Luck v Surbiton BC* [1949] Ch. 180.

A regulation which raises the penalty for an existing offence may be retrospective (*DPP v Lamb* [1941] 2 K.B. 89).

Distinguished from “retroactive”. See British Tax Review 2006 No.1, pp.15–18, suggesting that “perhaps it would be better to follow the Canadian meaning: restrict retroactive to statutes that alter or do something to the past . . . and use retrospective for statutes that recognise past transactions but alter the consequences of them in the future without changing the past . . . The disadvantage is that it would conflict with the

RETURN

established use of retrospective in English cases up to the present.” Arguably, an additional disadvantage of what is proposed is that it is wholly unintelligible.

RETURN. This word in the Limitation Act 1623 (c.16), did not imply that a plaintiff—beyond seas when the cause of action arose—had been in this country before; for, as regards a plaintiff who was never in this country before, it meant coming within the jurisdiction having been beyond seas when the cause of action arose (*Strithorst v Græme*, 3 Wils. 145; *Lafond v Raddock*, 22 L.J.C.P. 217; *Pardo v Bingham*, 4 Ch. 735). Cp. **ABSENT**.

A condition to a legacy that the legatee “return” to a place means that he come back to that place; and the condition is not performed if he die, or is lost at sea, whilst returning (*Priestly v Holgate*, 26 L.J. Ch. 448; *Sprigg*, 2 Vern. 394). So, if the word is “arrive” (*Burgess v Robinson*, 3 Mer. 7). See hereon 2 Jarm. (8th edn), 1467.

There is no duty on an executor to give the legatee notice of a condition on the latter to “return”, even though the executor himself will take a benefit by non-compliance therewith (*Re Lewis* [1904] 2 Ch. 656).

An appointment of A as executor of a will “if and when he shall return to England”, becomes effective on his returning to England for a visit of six months, though that be eight years after the death of the testator and though A (during such visit) remains domiciled out of England at the place whence he came (*Re Arbib and Class* [1891] 1 Ch. 601, cited **LITIGATION**); in that case Coleridge C.J. pointed out that the reading might have been different if the words had been “return to reside in England”.

“Return to his work”: a person is prevented “from returning to his work” in a factory who, though he returns to the factory, is incapable of work when there (*Lakeman v Stephenson*, L.R. 3 Q.B. 192).

A “return” of election expenses, if bona fide, was a “return” within s.33(5) of the Corrupt and Illegal Practices Prevention Act 1883 (c.51), though it was not a “true return” as prescribed by subs.(1) of the same section (*Mackinnon v Clark* [1898] 2 Q.B. 251).

The return to a writ, or commission, is a certificate from the proper person of what has been done under it (Cowel; Jacob).

“1. The issue in this case is whether the High Court of England and Wales has jurisdiction to order the “return” to this country of a small child who has never lived or even been here, on the basis either that he is habitually resident here or that he has British nationality. . . .

63. In my view, there is no doubt that the jurisdiction exists, insofar as it has not been taken away by the provisions of the 1986 Act. The question is whether it is appropriate to exercise it in the particular circumstances of the case.”

See **PROCURE**; **PROPER RETURN PORT**; **SALE ON TRIAL**.

A (Children), *Re (Rev 1)* [2013] UKSC 60.

For the meaning of “return” in the context of the Taxes Management Act 1970 see *Cotter v Revenue & Customs* [2013] UKSC 69.

RETURN DAY. (County Courts Act 1984 (c.28) s.138(2).) For the purposes of this section the “return day” is the date specified for the hearing in the possession summons (*Swordheath Properties v Bolt* [1992] 38 E.G. 152).

See **DAY OF HEARING**.

RETURNED NOTE. “‘Returned note’ is an expression which is perfectly understood in the City of London to designate a note which has been dishonoured” (per Bolland B., *Hedger v Steavenson*, 6 L.J. Ex. 192).

RETURNED UNSATISFIED. A writ of fieri facias returned after failing to gain access to the premises where it was to be executed, execution was not “returned unsatisfied” within the Insolvency Act 1986 (c.45) s.268(1)(b) to entitle creditors to present a bankruptcy petition (*Re A Debtor* (No.340 of 1992), *The Times*, March 6, 1995).

RETURNING FROM. See GOING TO.

RETURNING OFFICER. (Representation of the People Act 1983 (c.2) s.128(2).) The “returning officer” referred to the person in charge of the election procedure whether or not a poll was taken (*Absalom v Gillett* [1995] 1 W.L.R. 128).

REVELAND. See TAINLAND.

REVENUE. “Revenue” (Railways (Valuation for Rating) Act 1930 (c.24) s.4(3)(ii)(d)) bore its ordinary meaning. In relation to a business undertaking it connoted those incomings of the undertaking which were the products of or were incidental to the normal working of the undertaking (*LMS Railway v Anglo-Scottish Railways Assessment Authority*, 150 L.T. 361).

“Revenue charge”: see *Hutton v West Cork Railway*, 23 Ch. D. 654; *Midland Great Western Railway v Dublin & Meath Railway*, 4 Ry. & Can. Tr. Cas. 145.

“Revenue credit”: see *Bishop v Smyrna & Cassaba Railway* [1895] 2 Ch. 596.

Inland Revenue: see INLAND.

“Revenue laws”: see GAME LAWS.

Stat. Def., Finance Act 1981 (c.35) Sch.8 para.1.

See PROFITS; PUBLIC REVENUE; CAPITAL.

REVENUES. “Property, assets, and revenues”, in a company’s debentures: see *Page v International Agency*, 62 L.J. Ch. 610; UNDERTAKING.

REVEREND. This is not a title of honour or dignity, but merely a laudatory epithet or mark of respect, which people may inscribe on the tombstone of, e.g., a Wesleyan minister (*Keet v Smith*, 1 P.D. 73).

REVERSAL AMOUNT. Stat. Def., Corporation Tax Act 2009 s.1230.

REVERSE. The reversal of a judgment “is the making it void for error” (Jacob). See further *R. v Tyrone Justices* [1906] 2 I.R. 164, cited CONFIRM, which case gives a wider meaning to “reverse” than that of merely making a judgment void.

“Stop and reverse”: see SLACKEN.

REVERSIBLE. As to the meaning of “reversible” in a charterparty, see *Lowe & Stewart Ltd v Rowter S.S. Co Ltd* [1916] 2 A.C. 528; see further *Ambatielos v Anton Jurgens* [1923] A.C. 175; *Verren v Anglo-Dutch Brick Co*, 73 S.J. 451.

REVERSION. “A ‘reversion’ has two intendments—the one is an estate left continuing during the particular estate, which is the most common sense; the other is the returning of the land after the particular estate ended, which is the natural sense of the word according to the definition of the Latin-tongue, so that the reversion of the land and the land when it reverts is all one” (per Staunford J., *Throckmerton v Tracy*, 1 Plowd. 160 a).

“‘Reversion’, reversio commeth of the Latine word *revertor*, and signifieth a returning againe” (Co. Litt. 142B). A “reversion” is the undisposed of interest in land which reverts to the grantor after the exhaustion of the particular estates—e.g. for years, for life, or in tail—which he may have created. “There cannot, in the usual and proper sense of the term, be a reversion expectant upon an estate in fee-simple” and though in the writ of escheat the word “revert” is employed, yet an escheat is not properly a reversion (per Selborne C., *Att-Gen Ontario v Mercer*, 8 App. Cas. 767).

A remainder, on the other hand, is that “residue of an estate in land, depending upon a particular estate and created together with the same; and in law Latine it is called *remanere*” (Co. Litt. 49A); e.g. a grant of an estate for life to A and subject thereto to B in fee, the estate of B is a remainder.

In brief, the meaning of, and difference between, these words are expressed as follows: the reversion is what is left, and the remainder is that which is created by the grant after the existing possession. Both words are technical phrases. And though it is said in the Touchstone (249) that “a reversion may be granted by the name of remainder, or a remainder by the name of a reversion”, it needs a very strong context for such a construction. Thus the word “reversion” as used in s.8 of the Prescription Act 1832 (c.71), will not be read as including “remainder” (*Symons v Leaker*, 15 Q.B.D. 629; see further *Laird v Briggs*, 19 Ch. D. 22).

Lessees to “have like action, advantage, and remedy” against the grantees of “the reversion” as against their own “lessors and grantors, their heirs and successors” (32 Hen. 8 (c.34) s.2, repealed by Law of Property Act 1925 (c.20) see s.142)—“the ‘reversion’ must mean the reversion which the lessor had in him at the time at which he granted to lease, or to use Lord Justice Collins’ expression (*Rogers v Hosegood* [1900] 2 Ch. 406), ‘in the inception’ of the dealing between the parties” (per Farwell J., *Muller v Trafford* [1901] 1 Ch. 59).

For the purposes of s.18(1) of the Landlord and Tenant Act 1927 (c.36), the reversion was the reversion immediately expectant on the determination of the lease in question, irrespective of any reversionary lease which might have been granted (*Terroni and Necchi v Corsini* [1931] 1 Ch. 511). See also *Jones v Herxheimer* [1950] 2 K.B. 106; *Smiley v Townshend* [1950] 2 K.B. 311.

As to effect of a grant to “the reversions” in a conveyance of the fee simple, see *Burton v Barclay*, 9 L.J.O.S.C.P. 231.

“Contingent remainder”: see CONTINGENT.

“Run with the reversion”: see RUN WITH THE LAND.

Stat. Def., Landlord and Tenant (Rent Control) Act 1949 (c.40) Sch.I para.8; Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c.65) s.36; Finance Act 1963 (c.25) s.32(1); Development Land Tax Act 1976 (c.24) ss.37, 47. “means the interest expectant on the termination of a tenancy” (Landlord and Tenant (Covenants) Act 1995 (c.30) s.28(1)).

See IMMEDIATE REVERSION; LEASEHOLD REVERSION; PERSON ENTITLED; POSSESSION; PURCHASE.

REVERSIONARY INTEREST. (Administration of Estates Act 1925 (c.23) s.33(1).) Under a policy of life insurance, annual sums were payable for the period from the death of the assured to the expiration of 20 years from the date of the policy. Thereafter a lump sum became payable. Held, the annual sums and the lump sum did not constitute “reversionary interests” within the meaning of this section (*Re Fisher* [1943] Ch. 377). See also Law of Property Act 1925 (c.20) s.174.

Stat. Def., Finance Act 1975 (c.7) s.51; Capital Transfer Tax Act 1984 (c.51) s.47.

REVERT. Property to “revert to the debtor” (s.35 of the Bankruptcy Act 1883 (c.52)): see *Bailey v Johnson* (1870–71) L.R. 6 Ex. 279; see thereon *Ex p. Morier*, 12 Ch. D. 491. See Bankruptcy Act 1914 (c.59) s.29(2).

“Then the same to revert back”: see *Re Norman* [1879] W.N. 175.

See further FRIENDS AND RELATIONS.

REVERTER. “There does not appear to have been any discussion in the cases about the legal character of a reverter in the case of copyright. However, reverter of title can occur in other areas of the law. Before 1926, it was possible to have reverter at law in the case of a determinable fee simple of land. Further, as Lord Justice Mummery pointed out in the course of argument, reverter at law was possible under the School Sites Act 1841 (and similar statutes) until the Reverter of Sites Act 1987. The substantial case law on the 1841 Act does show that difficulties can arise in a case where it is not clear whether a reverter has, or has not, occurred or in a case where reverter has occurred but no-one had appreciated that fact. Notwithstanding such difficulties, in these areas of the law, there is no suggestion that a reverter can only occur where the fact of reverter is fixed and certain at the outset. On the contrary, it is possible to have a reverter which is contingent on the happening of an event which might never occur.” (*Crosstown Music Company ILLC v Rive Droite Music Ltd* [2010] EWCA Civ 1222.)

REVIEW. The Rules of the Supreme Court Ord.59 r.3 provided that an appeal to the Court of Appeal was to be way of rehearing. The equivalent provision in the Civil Procedure Rules r.52.11 talks of an appeal being limited to a review of the decision of the lower court. The two concepts are in essence the same, namely a review of the findings made by the judge below in the light of the evidence presented to the court below without (save exceptionally) hearing evidence in the appellate court (*Assicurazioni Generali SpA v Arab Insurance Group* [2003] 1 W.L.R. 577, CA).

“The word ‘review’, of itself, gives no relevant guidance as to the scope of inquiry by the FHSAA. Where a decision is to be reviewed, the reviewing body will normally examine the lawfulness of the decision in question, as in the expression ‘judicial review’ or whether that decision is safe or well-founded, as in the title of the Criminal Cases Review Commission.” (*Kataria v Essex Strategic Health Authority* [2004] 3 All E.R. 572 at 581, Q.B.D. per Stanley Burnton J. The judgment proceeds to distinguish between review and appeal.)

See APPEAL; REMAKE.

REVIEWABLE ACT. “According to settled case-law, any measure the legal effects of which are binding on, and capable of affecting the interests of, the applicant by bringing about a distinct change in his legal position is an act or decision which may be the subject of an action for annulment under Article 230 EC. The form in which such acts or decisions are cast is, in principle, immaterial as regards the question whether they are open to challenge by an action for annulment (*IBM v Commission*, para.53 above, para.9; Case T-241/97 *Stork Amsterdam v Commission* [2000] ECR II-309, para.49). In order to ascertain whether or not an act which has been challenged produces such effects it is necessary to look to its substance (Case C-147/96 *Netherlands v Commission* [2000] ECR I-4723, paragraph 27).” (*Vodafone España SA v Commission of the European Communities* (Case T-109/06) CFI.)

REVIEWABLE DISPOSITION. “Reviewable disposition” (Matrimonial Causes Act 1973 (c.18) s.37(2)). Where an order had been “made which, on the face of it, discharged an injunction which had restrained a husband from disposing of his properties, the disposition by him of the properties was nevertheless a “reviewable disposition” within the meaning of this section (*Sherry v Sherry* [1991] 1 F.L.R. 307).

REVISION. Stat. Def., Civil Jurisdiction and Judgments Act 1982 (c.27) s.14.

REVIVE. Revival of a revoked will: see *McLeod v McNab* [1891] A.C. 471, cited CONFIRM; *Re Dennis* [1891] P. 326; *Re Chilcott* [1897] P. 223; RATIFY; PUBLICATION.

REVOCATION

REVOCATION. “Revocation’ is the calling back of a thing granted” (Cowel; Jacob).

As to what amounts to a rescindment, renunciation, or revocation, of a contract, see *Hochster v De la Tour*, 22 L.J.Q.B. 455, on which case see *Johnstone v Milling*, 16 Q.B.D. 460. See further ABANDONMENT. See hereon LITIGATION.

A clause of redemption in a mortgage was not a “power of revocation” within the Mortmain Acts, Charitable Uses Act 1735 (c.36) s.1; Act of 1828 (c.85) s.1; Act of 1888 (c.42) s.4(3) (*Doe d. Graham v Hawkins*, 2 Q.B. 212).

As to what words will revoke a gift to the individual without revoking the subsequent limitations of the property comprised in the gift, see *Re Whitehorne*, applied in *Re McEacharn* [1906] 2 Ch. 121, applying *Re Love*, 47 L.J. Ch. 783, and *Alt v Gregory*, 8 D.G.M. & G. 221; *secus*, *Philipps v Allen*, 7 Sim. 446; *Sanford v Sanford*, 1 D.G. & S. 67; *Boulcott v Boulcott*, 23 L.J. Ch. 57; *Tabor v Prentice*, 32 W.R. 872; *Re Dunster* [1909] 1 Ch. 103; *Re Wilkins* [1920] 2 Ch. 63. See *Re Freeman* [1910] 1 Ch. 681, cited THROUGHOUT. Under the Wills Act 1837 (c.26), no formalities were required for the execution of a soldier’s will, and therefore none were required for its revocation: see *Re Gossage* [1921] P. 194. By s.30 of the Criminal Justice Administration Act 1914 (c.58), an order made by a court of summary jurisdiction for the periodical payment of money might be revoked, revived, or varied by a subsequent order: see *Dodd v Dodd* [1920] 1 K.B. 71.

As to what is a revocation of a will, see Wms. Ex. (12th edn), 78 et seq.; Jarm. (8th edn), Ch.8; BURN; DESTROY; TEAR. Whatever is done, the *animus revocandi* is essential: see DEPENDENT. To draw a pen through several parts of a will, to write on it “this is revoked”, and then throw it into the waste-paper basket, is not a revocation (*Cheese v Lovejoy*, 2 P.D. 251). See further *Cadell v Wilcocks* [1898] P. 21; *Chichester v Quatrefajas* [1895] P. 186; *Re Hodgkinson* [1893] P. 339; *Re Gilbert* [1893] P. 183; *Margary v Robinson*, 12 P.D. 8. A general revoking clause revokes all previous wills, including such as may have executed a power of appointment (*Sotheran v Dening*, 20 Ch. D. 99; *Re Kingdon*, 32 Ch. D. 604; *Cadell v Wilcocks*, above). See CANCEL.

A second will, not containing a revocation clause, and wholly ineffectual owing to the universal legatee being an attesting witness, was held not to revoke the first (*Re Robinson* [1930] 2 Ch. 332).

A will is not revoked merely by the execution of a later will called a “last will” and referring to the earlier will as “cancelled” (*Re Hawkesley’s Settlement* [1934] Ch. 384).

A covenant not to revoke a will is not broken by the marriage of the testator (*Re Marsland* [1939] Ch. 820).

As to the effect of a general clause of a revocation in a will on a previous testamentary exercise of a power of appointment, see *Lowthorpe-Lutwidge v Lowthorpe-Lutwidge* [1935] P. 151.

See as to dependent relative revocation, *Re Botting* [1951] 2 T.L.R. 1089; *Re Bromham* [1951] 2 T.L.R. 1149.

“Revoke or determine”: see DETERMINE.

REVOKE. See REVOCATION.

“The natural meaning of the term ‘revoke’ must surely make it the apt word when the Secretary of State is asked to look again, once an order has been made.” (*R. (on the application of Mehmet) v Secretary of State for the Home Department* [2011] EWHC 741 (Admin).)

REVOLT. “Make revolt in a ship” (Piracy Act 1698 (c.7) s.9) did not include force used against the master to prevent him from committing unlawful homicide (*R. v Rose*, 2 Cox C.C. 329; *The Shepherdess*, 5 Rob. C. 266).

REVOLVER. Stat. Def., Firearms (Amendment) Act 1988 (c.45) s.25.

REWARD. “Reward” for a vote, e.g. Municipal Corporations Act 1835 (c.76) s.54, includes giving an employment (*Harding v Stokes*, 5 L.J. Ex. 178).

As to an offer of a “reward”, see *Carlill v Carbolic Smoke Ball Co* [1893] 1 Q.B. 256, cited GAMING CONTRACT; OFFER.

“Employed for reward”: see *Bruce v Prosser*, 35 S.L.R. 270, cited EMPLOYED.

The word “reward” in s.1 of the Public Bodies Corrupt Practices Act 1889 (c.69) can cover receipt of money for a past favour without any antecedent agreement (*R. v Andrews-Weatherfoil* [1972] 1 W.L.R. 118).

“For reward”: a passenger in a paraglider flight was not carried “for reward” where the flight was part of a course of instruction for which the passenger paid (*Disley v Levine* [2002] 1 W.L.R. 785, CA).

“Pecuniary reward”: see MONEY.

Stat. Def., Civil Aviation Act 1982 (c.16) s.105.

See RECOVERY.

RIBBON DEVELOPMENT. Stat. Def., Restriction of Ribbon Development Act 1935 (c.47).

RICH. See PROVE.

RICHMOND’S (DUKE OF) ACT. Regulation of Railways Act 1868 (c.119).

RIDE. “To ride something carries the connotation of being on or in the thing being ridden. You ride a horse if you are on its back, just as you ride if you are on a motor cycle or in a motor car. You do not ride a horse if you are walking beside it guiding it by a leading rein. In that situation you are ‘leading’ it, just as you are not riding a cow but ‘driving’ it if you are prodding it with a stick from behind to persuade it to move forward (as in the drover driving his cow to market). On the other hand, you do not have to be seated to be riding. The jockey of the Derby winner is riding the horse as he crosses the winning line even if he is not sitting in the saddle but crouching with his whole weight on the stirrups. So too the cyclist who does not use the saddle but puts his weight on the pedals. And the driver of a steam locomotive, just like the driver of an ancient chariot, is riding on the footplate even if he stands throughout the entire journey.” (*Coates v Crown Prosecution Service* [2011] EWHC 2032 (Admin).)

RIDER. See DRIVE.

RIDGE. See SELION.

RIDING. A person is “riding” a motorcycle contrary to s.72 of the Highways Act 1835 (c.50) even if he merely sits astride it and propels it with his feet. This section forbade the riding of a motorcycle on a footpath by the side of a road made or set apart for the accommodation of foot passengers, and was held not to apply to footpaths in general (*Selby v DPP* [1994] R.T.R. 157).

RIDING ESTABLISHMENT. Stat. Def., Riding Establishments Act 1939 (c.56) s.3.

RIFLE. Stat. Def., Firearms (Amendment) Act 1988 (c.45) s.25.

RIGGER. See *Chislett v Macbeth*, 53 S.J. 270.

RIGGING. “‘Rigging the market’ is going into the market pretending to buy shares by a person whom you put forward to buy them, who is not really buying them but only pretending to buy them, in order that they may be quoted in the public papers as

RIGHT

bearing a premium which premium is never paid” (per Malins V.C., *Rubery v Grant*, L.R. 13 Eq. 447). See hereon *R. v Berenger*, 3 M. & S. 67; *R. v Aspinall*, 2 Q.B.D. 48; *Scott v Brown* [1892] 2 Q.B. 724.

See POOL; PRICE.

RIGHT. “As a matter of substance, I do not consider that the holder of an EUA [European Union Allowance] has a ‘right’ which he or she can enforce by way of civil action. It is not a ‘right’ (in the Hohfeldian sense) to which there is a correlative obligation vested in another person. It does not give the holder a ‘right’ to emit CO₂ in this sense. Rather it represents at most a permission (or liberty in the Hohfeldian sense) or an exemption from a prohibition or fine. But for the entitlement to the EUA, the holder would either be prohibited from emitting CO₂ beyond a certain level or at least would be required to pay a fine if he did so. In this way, the holding of the EUA exempts the holder from the payment of that fine. An EUA is a creature of the ETS. As a matter of form an EUA exists only in electronic form. It is transferable automatically by electronic means within the registry system. Under the ETS legislation it is transferable under the terms of the ETS Directive. It has economic value, first because it can be used to avoid a fine, and secondly, because there is an active market for trade in EUAs. The evidence before me establishes that substantial amounts of money change hands between a transferor and a transferee. Each EUA has its own unique number and can be located by reference to that number.” (*Armstrong DLW GmbH v Winnington Networks Ltd* [2012] EWHC 10 (Ch).)

“... that Beresford is authority for the following propositions: (a) That there is a distinction between a use of land ‘by right’ and a use of land ‘as of right’. (b) That if a statute properly construed confers a right on the public to use land for recreational purposes their use of that land will be by right and not as of right.” (*Barkas v North Yorkshire County Council* [2012] EWCA Civ 1373.)

RIGHT; RIGHTS. “‘Right’, *jus sive rectum* (which Littleton often useth) signifieth properly, and specially in writs and pleadings, when an estate is turned to a right, as by discontinuance, disseisin, etc. where it shall bee said, *quod jus descendit et non terra*. But (right) doth also include the estate *in esse* in conveyances; and therefore if tenant in fee simple make a lease for yeares, and release all his right in the land to the lessee and his heires the whole estate in fee simple passeth. And so commonly in fines, the right of the land includeth and passeth the state of the land; as *A. cognovit tenementa prædicta esse jus ipsius, B., etc.* And the statute (West. 2, c.3) saith, *jus suum defendere*, (which is) *statum suum*. And note that there is *jus recuperandi, jus inrandi, jus habendi, jus retinendi, jus percipiendi, jus possidendi*” (Co. Litt. 345A, B; see hereon Elph. 204–209). See JUS.

“‘Right’ is where one hath a thing that was taken from another wrongfully, as by disseisin, discontinuance, or putting out, or such like, and the challenge or claime that he hath who should have the thing, is called right” (Termes de la Ley, Droit).

The saving of every “right, claim, privilege, franchise, exemption, or immunity”, in s.179 of the Thames Conservancy Act 1857 (c. cxlvii), meant a vested right of property, not a mere general right as one of the public (*Kearns v Cordwainers’ Co*, 28 L.J.C.P. 285). See further PRACTICE.

Mere indulgence does not confer a right (per Bowen L.J., *Chamber Colliery Co v Hopwood*, above, and in *Blount v Layard* [1891] 2 Ch. 691, fn.).

“Right acquired”: see *Hamilton Gell v White* [1922] 2 K.B. 422; *Briggs v Dryden*, 133 L.T. 409. See also ACQUIRE.

"Rights", etc. "occupied or enjoyed": as to what rights of road, water-course, etc. will pass in a conveyance under the general words, "all rights, etc. to the said hereditaments belonging, or occupied or enjoyed therewith, or reputed as part parcel or member thereof": see *Watts v Kelson*, 6 Ch. 166; *Kay v Oxley*, L.R. 10 Q.B. 360; *Thomas v Owen*, 20 Q.B.D. 231, applied in *Westwood v Heywood* [1921] 2 Ch. 130, cited RESERVATION; *Bayley v Great Western Railway*, 26 Ch. D. 434; *Roe v Siddons*, 22 Q.B.D. 224; APPURTENANCES; RIGHT OF WAY.

A question, by originating summons, put by trustees of a will whether a particular transaction would attract estate duty was not a claim for a legal or equitable right within the old R.S.C. Ord.54 r.1A (*Re Barnato* [1949] Ch. 21).

"All privileges, easements, rights and advantages, etc." (s.62 of the Law of Property Act 1925 (c.20)) were held to pass a sheep walk appurtenant to a farm: see *White v Williams* [1922] 1 K.B. 727; *Gregg v Richards* [1926] Ch. 102.

"Easement, right or privilege" (s. 41 of the Settled Land Act 1925 (c.18)): see *Re Sitwell* [1905] 1 Ch. 460, cited SURFACE.

"Easement right or privilege" (Land Charges Act 1925 (c.22) s.10(1) Class D(iii)) did not cover the possessory rights of a competent authority under reg.51 of the Defence (General) Regulations 1939, which were, therefore, not capable of registration (*Lewisham BC v Maloney* [1947] L.J.R. 991).

"Other right" (Finance Act 1940 (c.29) s.45) meant any kind of right having a value of some kind or other (*Re Stratton's Disclaimer, Stratton v IRC* [1958] Ch. 42).

(Transport Act 1947 (c.49) s.14(2).) The "rights" transferred from the London Passenger Transport Board to the Transport Commission were all the rights known to the law (*Smith v London Transport Executive* [1951] A.C. 555).

"Rights" (Income Tax Act 1952 (c.10) s.412(1); Income and Corporation Taxes Act 1970 (c.10) s.478) was not to be interpreted to mean that whenever the debtor company put itself into a better position to meet its obligations the creditor acquired some new or increased right against his debtor (*IRC v Herdman* [1969] 1 W.L.R. 323).

"Rights under any compromise" (Legal Aid Act 1974 (c.4) s.9(7)). Where a widow had interests in a house and a hotel and the husband's executors, seeking possession of the hotel, obtained summary judgment against her it was held, after the appeal had been compromised by the widow surrendering her interest in the hotel for an absolute interest in the house, that the house was a right under a compromise within the meaning of this section, notwithstanding that it had not been in issue in the proceedings (*Van Hoorn v The Law Society* [1984] 3 W.L.R. 199).

"Residuary . . . rights and liabilities" (Local Government Act 1985 (c.51) s.62). The right to acquire land by compulsory purchase was a "right" within the meaning of this section (*Central Property Investment Co v Camden LBC, The Times*, April 18, 1989).

"Rights in rem": an action for a declaration that a person held immovable property as trustee and for an order requiring that person to execute such documents as should be required to vest the legal ownership in another was not an action in rem for the purposes of the Civil Jurisdiction and Judgments Act 1982 (c.27) Sch.1 art.16(1) (*Webb v Webb* [1994] 3 All E.R. 911).

The claim of a trustee in bankruptcy that a half-share in property formed part of the bankrupt's estate was a right in rem of immoveable property since it was a claim in legal ownership (*Re Hayward (Deceased)* [1997] 1 All E.R. 32).

(European Convention on Human Rights 1950 art.6.) A dispute over a "civil right" had to be genuine and serious, and may relate not only to the existence of the right but

RIGHT

also to its scope and the manner of its exercise and the outcome of proceedings must be directly decisive for the right in question before there could be a violation of art.6 (*Hamer v France* (1997) 23 E.H.R.R. 1).

“Rights in property arising out of a matrimonial relationship” (Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters art.1). An order which is solely concerned with the division of property between spouses was a decision concerned with the rights of property arising out of a matrimonial relationship and not enforceable under the Brussels Convention (*Van den Boogaard v Laumen* [1997] 3 W.L.R. 308).

From the moment when it takes effect an order under s.24(1)(a) of the Matrimonial Causes Act 1973 (transfer of interest in matrimonial home) confers an equitable interest in the property on the person to whom the property is ordered to be transferred. For the purposes of s.283(5) of the Insolvency Act 1986 (rights subject to which trustee takes estate) the equitable interest is a right to which an estate can be subject (*Mountney v Treharne* [2002] 3 W.L.R. 1760, CA.)

A right for the purpose of art.6(1) of the European Convention on Human Rights does not arise merely because a person has an interest in the operation of a legislative scheme. If Parliament chooses to enact a scheme whereby the right vests in a third party for the benefit of individuals, the individuals do not (or at least not necessarily) acquire rights (*R. (Kehoe) v Secretary of State for Work and Pensions* [2005] UKHL 48).

“Property and rights” in a company’s mortgaging powers: see PROPERTY.

“Rights”: Stat. Def., Trustee Act 1925 (c.19) s.68; Patents Act 1977 (c.37) s.130.

See A; ABANDONMENT; AS OF RIGHT; BILL OF RIGHTS; CIVIL RIGHTS; CUSTOMARY RIGHTS; EXCLUSIVE RIGHT; FIRST ACCRUED; IN HIS OWN RIGHT; NATURAL RIGHTS; PETITION; POLITICAL; PUBLIC RIGHT; SHARE; THE.

RIGHT AHEAD. “Right ahead”, as used in the regulations for preventing collisions at sea: see *The Fire Queen*, 12 P.D. 147.

RIGHT AND TITLE. The addition to a devise of lands of all testator’s “right and title” thereto, would even before the Wills Act 1837 (c.26) pass the fee (*Sharp v Sharp*, 4 Moo. & Pay. 445); so of the word “interest” therein (*Andrew v Southouse*, 5 T.R. 292).

RIGHT AT LAW. See RIGHT IN EQUITY.

RIGHT CLOSE. Writ of: see SOCAGE.

RIGHT DELIVERY. Payment of freight “on right delivery of the cargo” means that the payment and delivery are to be concurrent acts (*Paynter v James*, L.R. 2 C.P. 348). See further *Williams v Canton Insurance* [1901] A.C. 473, cited LUMP.

Where under a clause in a charterparty the balance of freight is to be paid on “right and true delivery”, those words did not mean of the whole cargo shipped, and the balance of freight was due when cargo which had arrived was completely delivered (*Skibs A/S Trolla and Skibs A/S Tautra v United Enterprise & Shipping (Pte); The Tarva* [1973] 2 Lloyd’s Rep. 385).

RIGHT IN EQUITY. A right in equity, as distinguished from a right at law, is a right not by the common law or by statute, but which until recent times could only be enforced by the court of chancery—a court now absorbed into, and forming a division of, the High Court. Starting to redress the rigidity of legal rules (see *Termes de la Ley*, Equitie), the guiding light of equity was originally the discretion of the Chancellor. “Equity is a roguish thing; for law we have a measure, know what to trust to; equity is

according to the conscience of him that is Chancellor, and as that is larger or narrower so is equity. 'Tis all one as if they should make the standard for the measure we call a foot, a chancellor's foot" (Selden's Table Talk). But long before Blackstone's time, equity became, and has remained, "a laboured connected system, governed by established rules and bound down by precedents from which its courts do not depart" (3 B1. Com. 432).

Notwithstanding the union of the old courts of law with the court of chancery effected by the Judicature Acts (see JUDICATURE), and the assimilation of jurisdiction by ss.24 and 25 of the Judicature Act 1873 (c.66), the old phraseology of right at law as distinct from right in equity remained of practical importance.

An agreement whereby a "right in equity" to personal chattels was conferred, was a bill of sale (s.4 of the Bills of Sale Act 1878 (c.31)); that meant, a right in equity as distinct from a right at law (*Ex p. Hubbard, Re Hardwick*, 17 Q.B.D. 690). Therefore, a building agreement which provided that all materials brought by the builder on the land should become the property of the building-owner, was not a bill of sale (*Reeves v Barlow*, 12 Q.B.D. 436, see further *Hart v Porthgain Harbour Co* [1903] 1 Ch. 690, both cited BILL OF SALE; *Re David Allester Ltd* [1922] 2 Ch. 211); so, of a document which gave an agent a cover on goods which might come to his hands (*Morris v Flipso* [1892] 2 Ch. 352; *Wrightson v McArthur* [1921] 2 K.B. 807); for neither of those documents gave any right to any goods until the happening of some future event, and, if and when such future event happened, the right to the goods was at law, agreeably to Lord Bacon's 14th Maxim, *licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio præcedens quæ sortiatur effectum interveniente novo actu*: see hereon *Holroyd v Marshall*, 10 H.L. Cas. 191, on which case see *Tailby v Official Receiver*, 13 App. Cas. 523, cited VAGUE. Compare *Reeves v Barlow*, above, with *Climpson v Coles*, 23 Q.B.D. 465, cited LICENCE. See hereon *Re Hamilton, Young & Co* [1905] 2 K.B. 381, and *Stephenson v Thompson* [1924] 2 K.B. 240, both cited ORDINARY COURSE.

So, a lease for more than three years which was "void at law, unless made by deed" (s.3 of the Real Property Act 1845 (c.106)) might, in equity, be good as an agreement for a lease (*Parker v Taswell*, 27 L.J. Ch. 812, cited VOID). Cp. Law of Property Act 1925 (c.20) s.52.

See BY LAW; EQUITY.

RIGHT OF ACTION. "A 'right of action' is not the power of bringing an action. Anybody can bring an action though he has no right at all. The meaning of the phrase is that, the person has a right or claim before the action, which is determined by the action to be a valid right or claim" (per Esher M.R., *Att-Gen v Sudeley* [1896] 1 Q.B. 354).

See CHOSE IN ACTION.

RIGHT OF APPEAL. "Right of appeal", e.g. s.6 of the County Courts Act 1875 (c.50), is not limited to a right of appeal expressly given by statute, but includes a case where a judge has given leave to appeal (*Turner v Great Western Railway*, 2 Q.B.D. 125). See APPEAL.

RIGHT OF COMMON. This expression as used in s.1 of the Prescription Act 1832 (c.71) did not include rights in gross, "but contemplates only those more usual and ordinary rights of common and *profit à prendre* which are in some way appurtenant to land, and are limited to the wants of a dominant tenement" (*per curiam*, *Shuttleworth v Le Fleming*, 34 L.J.C.P. 311). See COMMON.

RIGHT

A right of shooting or sporting, even when coupled with a right to take game, is exercised primarily for pleasure and is therefore not capable of registration under the Commons Registration Act 1965 (c.64) (*Lustleigh Cleave, Devon (No.1)*, Ref No.209/D/114–130, Commons Commissioners).

Stat. Def., Commons Registration Act 1965 (c.64) s.22.

“The phrase ‘a right of common’ is neither ordinary English language nor a legal term of art.” (*Dalgleish or Willemse v French* [2011] Scot. C.S. CSOH 51.)

Stat. Def., “includes a cattlegate or beastgate (by whatever name known) and a right of sole or several vesture or herbage or of sole or several pasture, but does not include a right held for a term of years or from year to year” (Commons Act 2006 s.61(1)).

RIGHT OF ENTRY. For a historical analysis of what is meant by a right of entry, see [2002] C.L.J. 561–74. See ENTRY.

RIGHT OF FISHERY. See FISHERY.

RIGHT OF NAVIGATION. See per Fletcher Moulton L.J. in *Denaby, etc. Collieries v Anson* [1911] 1 K.B. 171, cited DOCKYARD PORT.

RIGHT OF PASTURAGE. “Right of pasturage usually enjoyed”: see *Musgrave v Inclosure Commissioners*, L.R. 9 Q.B. 162; PASTURAGE.

RIGHT OF RETAINER. See RETAIN; UNDULY.

RIGHT OF PATRONAGE. See PATRONAGE.

RIGHT OF STRAY. See STRAY.

RIGHT OF WAY. This phrase has (a) a legal, and (b) a popular, meaning. In its legal sense, it connotes the right or easement which one man has over the land of another, and in that sense, a man cannot have a right of way over his own land; but in its popular sense, “right of way” means the right of passing over a particular road or place which, of course, is inherent in the ownership of such road or place. For a discussion as to the sense in which the phrase was used as to the right, given by s.55 of the Railways Clauses Consolidation Act 1845 (c.20), to recover against a railway company for special damage done by their interference with a road, see *Llewellyn v Glamorgan Vale Railway* [1898] 1 Q.B. 473.

A right of way granted by a conveyance of land is, in the absence of controlling words, appurtenant to the whole of the land conveyed, and not only to the part of it to which the way is expressed to be a means of access (*Callard v Beeney* [1930] 1 K.B. 353).

As regards ways, rights, etc. “occupied or enjoyed with” land (s.62 of the Law of Property Act 1925 (c.20)), the simple question is, was the way, etc. in fact enjoyed at the date of the conveyance? The question of licence or no licence is, semble, immaterial (*International Tea Co v Hobbs* [1903] 2 Ch. 165, following *Kay v Oxley*, L.R. 10 Q.B. 360, and considering *Burrows v Lang*, below, and *Birmingham Bank v Ross*, 38 Ch. D. 295, cited GENERAL WORDS). Cp. *Pollard v Gare* [1901] 1 Ch. 834, cited LIGHT; *Burrows v Lang* [1907] 2 Ch. 508, cited TEMPORARY; *Clark v Barnes* [1929] 2 Ch. 368.

A right of way can validly be made appurtenant to land with which the way has no physical contiguity, but it must be beneficial in respect of the occupation of that land (*Todrick v Western National Omnibus Co Ltd* [1934] Ch. 561).

A prescriptive right of passage with horses and carts includes a right of passage for motor vehicles (*Lock v Abercester Ltd* [1939] Ch. 861).

Any right of way may exist for certain purposes only (*Cowling v Higginson*, 7 L.J. Ex. 265; *Brunton v Hall*, 1 Q.B. 792, cited LEAD AWAY; *Wimbledon Common*

Conservators v Dixon, 1 Ch. D. 362; *Bradburn v Morris*, 3 Ch. D. 812); and, without any express words of restriction, “prima facie, the grant of a right of way is the grant of a right of way having regard to the nature of the road over which it is granted and the purpose for which it is intended to be used” (per Jessel M.R., *Cannon v Villars*, 8 Ch. D. 421). See also *Milner’s Safe Co v Great Northern & City Railway* [1907] 1 Ch. 208, citing *Wimbledon Common Conservators v Dixon* and *Cannon v Villars* (above), but the order in *Milner’s Safe Co* case was, by arrangement, varied in CA [1907] 1 Ch. 229; *Hansford v Jago* [1921] 1 Ch. 322. A right of way for agricultural purposes does not include a right of way to a caravan park (*RCP Holdings v Rogers* [1953] 1 All E.R. 1029).

“A right of way may be created by a covenant by the owner of the servient tenement that the owner of the dominant tenement shall enjoy it” (Elph. 630, citing *Holmes v Seller*, 3 Lev. 305).

“A right of way ‘for all purposes’—that is, for all purposes with reference to the dominant tenement” (per Cozens-Hardy L.J., *Harris v Flower*, 74 L.J. Ch. 133); e.g. if that tenement is a field, the right “can only be used for the field in its ordinary use as a field; the right could not be used for a manufactory built upon the field; the use must be the reasonable use for the purposes of the land in the condition in which it was while the user took place” (per Willes J., *Williams v James*, L.R. 2 C.P. 582).

“The grant of a right of way to premises which may be, and are being, lawfully used as a workmen’s club (or, probably, used as any kind of club) extends to all persons lawfully going to and from the club, and includes the members of the club, associates, tradespeople, and servants. Reliance was placed upon the fact that in certain precedents in the books of grants of way, ‘visitors’ and ‘persons authorised’ are expressly mentioned; but it cannot be doubted that, in the ordinary case of a grant of a right of way to a house and premises which may only be used as a private dwelling-house, the right would extend not only to the grantee but to members of his family, servants, visitors, guests, and tradespeople, even though none of these persons were expressly mentioned in the grant” (per Swinfen Eady J., *Baxendale v North Lambeth Liberal Club* [1902] 2 Ch. 429). Cp. *Keith v Twentieth Century Club*, 73 L.J. Ch. 549, cited FRIEND; *May v Belleville* [1905] 2 Ch. 605, cited RIGHT; *Hammond v Prentice* [1920] 1 Ch. 201.

As to what is an excessive user, see *Williams v James*, L.R. 2 C.P. 577; *Harris v Flower*, 74 L.J. Ch. 127, distinguishing *Finch v Great Western Railway*, 5 Ex. D. 254; *Milner’s Safe Co v Great Northern & City Railway* [1907] 1 Ch. 208.

“A church path is private in the sense that nobody not an inhabitant of the parish has a right to use the church path at all. It is a limited right—recognised for centuries by the law—the right of the inhabitants of the parish to use the path for the purpose of getting to their church. A church path, or church way, has been described by some of the oldest writers as being a way of necessity, or, in other words, a customary way, by which the inhabitants of the parish got to their church. But it is distinctly not a highway” (per Sir Edward Clarke, cited and applied by Joyce J., *Brocklebank v Thompson*, 72 L.J. Ch. 626).

The freedom to navigate in “any public right of way” reserved in by-laws regulating a nature reserve did not include a right to navigate in all tidal waters in the reserve (*Evans v Godber* [1974] 1 W.L.R. 1317).

RIGHT

(Rights of Way Act 1932 (c.45).) As to the facts which had to be established to bring a case within the Act, see *Merstham Manor Ltd v Coulsdon and Purley Urban DC* [1937] 2 K.B. 77; *Jones v Bates*, 158 L.T. 507.

(Rights of Way Act 1932 (c.45) s.1(1)(8).) Section 1(1) does not apply to rights of navigation on non-tidal waters (*Att-Gen (ex rel. Yorkshire Derwent Trust) v Brotherton* [1991] 3 W.L.R. 1126). See also WAY.

(Law of Property Act 1925 (c.20) s.193(1).) For the purposes of s.193(1), rights of access to commons for air and access were not confined to access on foot but extended to riding which was a normal way of taking air and access in 1925 (*R. v Secretary of State for the Environment, Ex p. Billson* [1998] 2 All E.R. 587).

Stat. Def., National Parks and Access to the Countryside Act 1949 (c.97) s.27(6); Wildlife and Countryside Act 1981 (c.69) s.66.

See APPURTENANCES; WAY; RIGHT; ABANDONMENT; AS NOW ENJOYED; NON-USER.

RIGHT OVER LAND. Stat. Def., Planning Act 2008 s.235(2).

RIGHT TO BID RESERVED. See RESERVED BIDDING.

RIGHT TO LET DOWN THE SURFACE. See SURFACE.

RIGHT TO OCCUPY. “Right to occupy as a residence” (Rent Act 1968 (c.23) s.70(i)). The occupier of a furnished room in a so-called “hotel”, which offered no board but provided a gas ring and a key to the door, has a “right to occupy” that room “as a residence” for the purposes of this section (*Luganda v Services Hotels* [1969] 2 Ch. 209).

“Rights of occupation”: Stat. Def., Matrimonial Homes Act 1967 (c.75) s.1.

RIGHT TO PARTICIPATE. The “right to participate” (Local Government Act 1933 (c.51) s.76(1)) had to be a legal right: a ratepayer, as such, had no legal right to have a house supplied by the local authority (*Brown v DPP* [1956] 2 Q.B. 369).

RIGHT TO RECEIVE. Forfeiture on a life beneficiary losing “the right to receive” the income: see *Re Greenwood* [1901] 1 Ch. 887, cited SUFFER.

“It is relatively unusual to speak of a right to receive money; far more common is consideration of an obligation to pay on the one hand or a right to demand or require payment of money on the other. Nor is there any issue as between chargor and chargee as to the latter’s ability to give a good receipt. If I am right in my view that the chargor cannot oblige the chargee to accept anything short of a full tender, there is no duty on the chargee to receive anything less than that full tender but the absence of a duty to receive does not, as it seems to me, of itself connote the absence of a right to receive. It might also be that a right to receive is not coincident with an ability to receive. The ‘right to receive the money’ is an expression that can be traced back through similar forebears to the legislation on the subject of limitation in the reign of William IV but I need struggle no further with what, untutored, I would have found a puzzling formula as the phrase has been dealt with in *Hornsey Local Board v Monarch Investment Building Society* (1889) 24 Q.B.D. 1, CA, a case to which I need to turn in some detail as, unless it can be distinguished, it plainly binds me” (*Gotham v Doodes* [2005] EWHC 2576 at [12], Ch per Lindsay J.)

See also PRESENT RIGHT TO RECEIVE.

RIGHT TO RENEW. A lease for one year gave the landlord the right to determine the term on giving a month’s notice; the tenant was also given the “right to renew for yearly periods”. This right was held to be subject to the landlord’s right to determine the tenancy (*Victoria Mansions Ltd* [1941] Gaz. L.R. 223).

RIGHT TO RESIDE. Lawful presence and right to reside are not coterminous (*Abdirahman v Secretary of State for Work and Pensions* [2007] EWCA Civ 657).

RIGHT TO USE LAND. "Right to use land" (Finance Act 1963 (c.25) s.15(1)(c)) included a right to take turves granted by the landowner to an independent contractor (*Lowe v Ashmore (J.W.)* [1971] Ch. 545).

RIGHTEOUSNESS OF THE TRANSACTION. The doctrine of probate law of the righteousness of the transaction in relation to the validity of a will does not permit the court to make a decision based on a moral judgment but requires simply satisfaction as to the deceased's knowledge and approval of the contents of the will (*Fuller v Strum* [2002] 2 All E.R. 87, CA).

RIGHTS. See **RIGHT**.

RIGHTS (OF CHILDREN). Stat. Def., Children and Young People (Scotland) Act 2014 s.4.

RIGHTS OF COMMON. This phrase as used in s.14 of the Military Lands Act 1892 (c.43) as amended by the Criminal Justice Act 1982 (c.48) is restricted to legal rights. It is not wide enough to embrace any general practice of taking air and exercise over common land (*DPP v Hutchinson* [1989] 3 W.L.R. 281).

RIGHTS OF CUSTODY. For an autonomous interpretation given to the expression "rights of custody" in relation to the Hague Convention on International Child Abduction, see *Re P. (A Child) (Abduction: Custody Rights)* [2005] 2 W.L.R. 201, CA.

RIGID. The word "rigid" in a patent did not necessarily denote 100 per cent rigidity. The requirement was that the members be of sufficient rigidity to do the job as handles of pliers (*Warheit v Olympia Tools Ltd* [2002] EWCA Civ 1161, CA).

RING AWASH. See **STOCK AWASH**.

RINGING THE CHANGES. This trick amounts to theft (*R. v Hollis*, 12 Q.B.D. 25).

RIOT. "'Riot' is where three (at the least) or more, do some unlawfull act; as to beat a man, enter upon the possession of another, or such like" (Termes de la Ley). See further 2 Hawk. P.C. 622; Jacob.

"The word 'riot' is a term of art and, contrary to popular belief, a riot may involve no noise or disturbance of the neighbours though there must be some force or violence" (per Lord Goddard, *R. v Sharp*, *R. v Johnson* [1957] 1 Q.B. 552).

See further *Re Allison and Richards*, 20 T.L.R. 584, cited **CONTROL**; *R. v Graham*, 16 Cox C.C. 420. See also *Field v Receiver for Metropolitan Police District* [1907] 2 K.B. 853, in which it was laid down that there are five necessary elements of a riot: (1) three persons at least, (2) common purpose, (3) execution or inception of common purpose, (4) an intent to help one another by force if necessary, against any person who may oppose them in the execution of their common purpose, and (5) force or violence displayed in such a manner as to alarm at least one person of reasonable firmness and courage. See also *Ford v Receiver for Metropolitan Police District* [1921] 2 K.B. 344; *Munday v Metropolitan Police District* [1949] 1 All E.R. 337.

As to the meaning of the word "riots" in an insurance policy, see *London & Lancashire Fire Insurance Co v Bolands Ltd*, 93 L.J.P.C. 230; see also *Boggan v Motor Union Insurance Co* [1922] 2 I.R. 184; *Cowper v General Accident Assurance Co* [1922] 2 I.R. 214.

See further **REBELLION**; **ROUT**; **UNLAWFUL ASSEMBLY**. Cp. **CIVIL COMMOTION**; **LEVY WAR**.

RIOTOUS. "Riotous conduct": see *Patrick v Kirkhope*, 21 S.L.R. 340, cited KEEP OPEN.

RIOTOUSLY. "Persons riotously and tumultuously assembled together" (Riot (Damages) Act 1886 (c.38) s.2(1)). The words "riotously and tumultuously" involve two concepts, both of which must be fulfilled to render the section applicable. For an assembly to be tumultuous it should be of considerable size and should be an excited and emotionally aroused assembly and generally, although not necessarily, should be accompanied by noise (*Edmonds (D.H.) v East Sussex Police Authority*, *The Times*, July 15, 1988).

RIPARIAN. "'Ripariæ', from *ripa*, a bank; in the Stat. Westminster 2, 1285, c.47, signifies water or river running between the banks, be it salt or fresh, 2 INST. FOL. 478" (Cowel).

A riparian owner is one whose land abuts on, and is part of the bank of, a river or stream, whether it be tidal or non-tidal (*Lyon v Fishmongers Co*, 1 App. Cas. 662). "I am of opinion that private riparian rights may and do exist in a tidal navigable river. The most material differences between the stream above and the stream below the limit of the tides are, that in an estuary or arm of the sea there exist, by the common law, public rights in respect of navigation and otherwise which do not generally (in this country) exist in the non-tidal parts of the stream; and that the *fundus* or bed of the non-tidal parts of the stream belongs, generally, to the riparian proprietors, while in the estuary it belongs, generally, to the Crown" (per Lord Selborne, *Lyon*, 1 App. Cas. 682); which case see further as to the rights of riparian owners and the foundation of those rights. See also *Bickett v Morris*, L.R. 1 Sc. & D. App. 47; *Orr Ewing v Colquhoun*, 2 App. Cas. 839; Angell on Watercourses. See further *Baily v Clark* [1902] 1 Ch. 649, cited WATERCOURSE; *McCartney v Londonderry, etc. Railway* [1904] A.C. 301, applying several cases and especially *Swindon Waterworks Co v Wilts & Berks Canal Navigation Co*, L.R. 7 H.L. 697; *Jones v Llanrwst*, 55 S.J. 125. Where the river or stream flows between lands of different proprietors, the boundary between them is the *medium filum aquæ*, as to ascertaining which in cases of difficulty, see *Great Torrington Commons Conservators v Moore Stevens* [1904] 1 Ch. 347. See hereon *Hilson v Scott*, 23 Rett. 241; *Attwood v Llay Main Collieries* [1926] 1 Ch. 444.

As to the right of a riparian owner to the use of the water in, and to abstract water from, the stream, see *Bealey v Shaw*, 6 East 208, 214; per Lord Kingsdown, *Miner v Gilmour*, 12 Moo. P.C. 156; *White v White*, 43 S.L.R. 116, cited FIRST WATER; *McCartney v Londonderry, etc. Railway*, above; *Sharp v Wilson*, 21 T.L.R. 679; *Roberts v Fellowes*, 94 L.T. 279; *Pirie v Kintore* [1906] A.C. 478; see also *City of Quebec v Bastien* [1921] 1 A.C. 265.

As to the right of a riparian owner to embank against flood, see *Gerrard v Crowe* [1921] 1 A.C. 395.

Stat. Def., Public Health Act 1936 (c.49) s.2(1); Public Health (London) Act 1936 (c.50) s.6(4).

RISK. "The fallacy in the defendant's argument arises from the double meaning of the word 'risk'. That means both the voyage commenced with necessary conditions to make the underwriters liable, and also the chance of loss during its performance" (per Bramwell L.J., *Bradford v Symondson*, 7 Q.B.D. 464; *Rodocanachi v Elliott*, L.R. 8 C.P. 663, 667, 668; see LOST OR NOT LOST). "It is said that the risk on a vessel, under a policy to a place generally without any provision as to her safety there, terminates on

the vessel being safely anchored at her port of destination, in the usual place and manner; and this, I think, is the correct rule" (per Amphlett B., *Stone v Marine Insurance*, 1 Ex. D. 86).

"Material alteration in risk": see *Marine Insurance v Stearns* [1901] 2 K.B. 912; see also *Marine Insurance Act 1906* (c.41) s.2.

"Including risk of craft": see *General Insurance of Trieste v Royal Exchange Assurance*, 2 Com. Cas. 144. "Including all risks of craft to and from the vessel" will cover carriage in a lighter belonging to the assured (per Mathew J., *Paul v North America Insurance*, 15 T.L.R. 534, rejecting *Sparrow v Caruthers*, 2 Stra. 1236, and *Strong v Natally*, 1 B. & P.N.R. 16).

"All risks": see *Jacob v Gaviller*, 87 L.T. 26, cited *MORTALITY*; *Vale & Co v Van Oppen & Co*, 37 T.L.R. 367.

A contract between buyer and seller for a marine insurance "against all risks" is not fulfilled by an insurance containing a warranty that excepts, capture, seizure, and detention: see *Yuill v Scott Robson*, 77 L.J.K.B. 259.

"All risks by land and by water" covers "all losses by accidental causes of any character" (per Walton J., *Schloss v Stevens* [1906] 2 K.B. 665; approved in *British & Foreign Marine Insurance Co v Gaunt* [1921] 2 A.C. 41).

A condition in a contract of carriage with a steamship company providing that passengers took upon themselves "all risk whatever of the passage" is quite unrestricted and intended in the most general words possible to tell the passenger that he must travel at his own risk (*Beaumont-Thomas v Blue Star Line* [1939] 3 All E.R. 127).

"Including all risks whatsoever . . . until safely delivered to consignees": this clause (called the warehouse to warehouse clause) is so usually inserted in marine policies on goods that it is incorporated into a re-insurance in the usual form (*Marten v Nippon Insurance*, 3 Com. Cas. 164).

"Taking up a risk": see *Byas v Miller*, 3 Com. Cas. 40.

"Shipper's risk" in a bill of lading: see *The Galileo* [1915] A.C. 199.

"All goods left at customers' risk": this clause did not avail storers who failed to show how a loss occurred (*Woolmer v Delmer Price* [1955] 1 Q.B. 291).

"Risk of contamination" (Food Hygiene Regulations 1955 (SI 1955/1906) reg.8, now Food Hygiene (General) Regulations 1960) means risk of such contamination as might be injurious to health (*MacFisheries v Coventry Corporation* [1957] 1 W.L.R. 1066).

"Exposed to risks to their health or safety" (Health and Safety at Work etc. Act 1974 (c.37) s.3(1)). In a case involving legionella pneumophila the prosecution did not have to prove that members of the public had actually inhaled the bacterium or that it had actually been there to be inhaled. It was sufficient if there had been a risk of it being there (*R. v Board of Trustees of the Science Museum, The Times*, 15 March 1993).

"Land risk": see *SEA INSURANCE*.

See *R. v Porter* [2008] EWCA Crim 1271, and see *New Law Journal*, August 1, 2008, pp.1102–03.

"The law does not aim to create an environment that is entirely risk free. It concerns itself with risks that are material. That, in effect, is what the word 'risk' which the statute means." (*R. v Chargot Ltd* [2008] UKHL 73 per Lord Hope of Craighead at para.27.)

RISK

For discussion of “real risk” and “serious risk”, see *Equality and Human Rights Commission v Prime Minister* [2011] EWHC 2401 (Admin).

Stat. Def., Flood and Water Management Act 2010 s.2.

See GRAVE RISK; SIGNIFICANT RISK.

See INTERIOR; MERCHANT’S RISK; OBVIOUS; OWN RISK; OWNER’S RISK; PASSENGER’S RISK; SHIP’S RISK; STEAM NAVIGATION; WITHOUT RISK. See further CHARACTER; PARTICULAR RISK.

RISK BEGINS TO RUN. See ATTACHES.

RISK MANAGEMENT. Stat. Def., Flood and Water Management Act 2010 s.3.

RISK OF BOATS. “Save risk of boats, so far as ships are liable thereto”, engrafted on an exception of perils of the sea, does not take away that exception as regards goods put into a boat and intended to be thereby conveyed from ship to shore but lost by a peril of the sea (*Johnston v Benson*, 4 Moo. P.C. 90).

RISK OF COLLISION. In art.14 of Regulations for Preventing Collisions at Sea 1879, “risk of collision” meant “a probability or reasonable chance of collision” (1 Maude & P. 599, citing *The Sylph*, 2 Sp. 75; *The Ericsson*, Sw. 38; *The Mangerton*, Sw. 120). See hereon *Wilson v Currie* [1894] A.C. 116; *The Guildhall* [1908] P. 29.

See COLLISION.

RISK OF CRAFT. See RISK; WITHOUT RISK.

RISK OF DOCKING. “Including all risks of docking”, in a policy of marine insurance was held to authorise the towing of a house boat seven or eight miles to a yard for the purpose of being placed in a gridiron for cleaning: see *Mountain v Whittle* [1921] 1 A.C. 615, cited LIBERTY TO SHIFT.

RISKS OF THE SEA. “All risks and dangers of the sea, etc.”: see *Castle v Playford*, L.R. 7 Ex. 98; PERIL OF THE SEA.

RITE. “The terms ‘rite’ and ‘ceremony’, as used in the first Prayer Book and from thence imported into our present Prayer Book, are terms, so to speak, of ecclesiastical and ritual art; and must be construed with reference to their use in contemporaneous and other works of writers upon ritual, unless they receive a different meaning from a comparison of other passages or parts in the Prayer Book or statute in which they are found” (per Sir R. Phillimore, *Martin v Mackonochie*, L.R. 2 A. & E. 130). “There is no doubt that the terms ‘rites and ceremonies’ are sometimes used in the sense contended for by the defendants”—i.e. an entire service, such as masses for the dead; or services for particular festivals; or customs such as creeping to the cross, and the like, which were abolished at the reformation—“but, on the whole, the result of my examination of the authorities leads me to the conclusion that there is a legal distinction between a ‘rite’ and a ‘ceremony’; the former consisting in services expressed in words, the latter in gestures or acts preceding, accompanying, or following, the utterance of these words” (*Martin* 135, 136). The actual decision in that case was reversed by the Privy Council (L.R. 4 A. & E. 279), but, semble, without affecting the above definitions. See further ORNAMENT.

See DIVINE SERVICE; MINISTRATION; SACRIFICE.

RIVER. As to what is to be considered river as distinguished from what is SEA, see *Horne v Mackenzie*, 6 Cl. & F. 628; MOUTH; NAVIGABLE; TIDAL RIVER.

“It is laid down in books of great authority that a river common to all men is called a highway, or is in the nature of a highway; but there are many important differences

between water highways and land highways"; but "the doctrine, once a highway always a highway, is as applicable to rivers as to roads" (per Lord Lindley, *Simpson v Att-Gen* [1904] A.C. 509).

A Royal Charter granting a right to obstruct, or giving privileges of navigation in, a public navigable river, is void (*Williams v Wilcox*, 7 L.J.Q.B. 229; *Simpson v Att-Gen* [1904] A.C. 476).

"River" (Clyde Navigation Act 1858 (c. cxlix)): see *Clyde Navigation v Laird*, 8 App. Cas. 658.

Electricity Supply Act 1919 (c.100) s.15(1): see *Metropolitan Water Board v Minister of Transport*, 42 T.L.R. 165.

"Salmon river" (Salmon Fishery Act 1865 (c.121) s.3): see *R. v Grey*, L.R. 1 Q.B. 469.

"River banks": see BANK.

Stat. Def., Salmon and Freshwater Fisheries Act 1975 (c.51) s.41.

See SEVERAL FISHERY; SEA; STREAM; DEDICATION.

ROAD. "The word 'road', used in a public Act, means, in my opinion, a public road—a road over which the public have rights" (per Bramwell B., *Curtis v Embery*, L.R. 7 Ex. 369), i.e. a road "open to all Her Majesty's subjects" (per Halsbury C., *Caledonian Railway v Turcan*, 67 L.J.P.C. 71).

A road, generally, includes its footpaths (per Parke and Taunton JJ., *Loveridge v Hodsoll*, 2 B. & Ad. 602). See also *Bryant v Marx*, 147 L.T. 499, in which Lord Hewart C.J. came to the same conclusion. See FOOTPATH.

"Road" (Road Transport Lighting Act 1927 (c.37) ss.1, 15; Road Transport Lighting Act 1957 (c.51) ss.1, 17) includes the forecourt or pull-up of a hotel to which the public have access (*Bugge v Taylor* [1941] 1 K.B. 198), but it does not include unpaved ground, adjoining the forecourt of a shop, which is used only by visitors to the shop (*Thomas v Dando* [1951] 2 K.B. 620). Nor does it include a yard which is not a thoroughfare but to which the public have access (*Heath v Pearson* [1957] Crim. L.R. 195).

"Road" (Road Traffic Regulation Act 1967 (c.76) ss.1, 104); can include a cul-de-sac (*Houghton v Scholfield* [1973] R.T.R. 239).

"Road" (Town and Country Planning Act 1971 (c.78) s.43(2)(d)) can include a private drive (*Spackman v Secretary of State for the Environment* [1977] 1 All E.R. 257).

Nautically, "a 'road' is an open passage of the sea, that receives its denomination commonly from some part adjacent, which, though it lie out at sea, yet in respect of the situation of the land adjacent and the depth and wideness of the place, is a safe place for the common riding or anchoring of ships—as Dover Road, Kirkley Road, Hung Road" (Hale, *De Portibus Maris*, Chap. 2). Cp. PORT; HAVEN.

"Road" in s.196 of the Road Traffic Act 1972 (c.20) (now Road Traffic Act 1988 (c.52) s.191) is, by definition, any highway and can therefore include bridleways or footpaths in so far as they are highways (*Lang v Hindhaugh* [1986] R.T.R. 271). A pavement which is both publicly and privately owned can still be a "road" if the public use and pass over the whole of it (*Price v DPP* [1990] R.T.R. 413). The car park of a rest home was not a "road" within the meaning of s.192(1) (*Seven Trent Water v Williams and the Motor Insurers' Bureau* [1995] 10 C.L. 638).

ROAD

The building of an hotel service yard amounted to “laying out or constructing a road” within the meaning of s.43(2)(d) of the Town and Country Planning Act 1971 (c.78) (*Hillingdon LBC v Secretary of State for the Environment* [1990] J.P.L. 575).

(Road Traffic Act 1988 (c.52) s.192.) The definition of “road” in s.192 was intended to include roads which did not qualify as highways whilst excluding roads to which the public had no access, so that a car park which had a roadway for the passage of vehicles entering and leaving parking bays which had conventional traffic signs and markings and to which the public had access, and where the risk of cars causing injuries could hardly be said to be less than that on other types of road and amounted to a “road” (*Cutter v Eagle Star Insurance Co Ltd*, *The Times*, December 3, 1996).

Where a car park was used for “through” traffic and not merely by pedestrians and vehicles to obtain access to and from a parking space, it could be properly be regarded as a “road” (*Clarke v Kato* [1997] 1 W.L.R. 208).

Whether a car park was a road was a matter of fact, but where a pub car park was used by customers of the pub, by walkers and by users of an adjacent garage, the car park was a road within the meaning of the Act (*O'Connor v Royal Insurance* [1996] 12 C.L. 463).

A road linking the docks with a town, owned by the port authority who had restricted access to it by means of a byelaw was a “road” within the meaning of s.192 (*Renwick v Scott* 1996 S.L.T. 1164).

A station car park was not a road for the purposes of the Road Traffic Act 1988 s.5 (*Brewer v DPP* T.L.R. March 5, 2004, Q.B.D.).

For the treatment of a statute defining a road as any road to which the public have access, see *Massey v Boulden* [2003] 2 All E.R. 87, CA.

Stat. Def., “means any highway and any other road to which the public has access” (s.4A(7) of the Scrap Metal Dealers Act 1964 (c.69), inserted by s.35 of the Vehicles (Crime) Act 2001 (c.3)).

Stat. Def., “means any length of highway or of any other road to which the public has access, and includes bridges over which a road passes” (Traffic Management Act 2004 (c.18) s.15).

Stat. Def., Road Traffic Act 1988 (c.52) s.192; Road Traffic Offenders Act 1988 (c.53) s.98; Horses (Protective Headgear) Act 1990 (c.25) s.3; Goods Vehicles (Licensing of Operators) Act 1995 (c.23) s.58(1).

“Road ferry”: Stat. Def., Highways Act 1980 (c.66) s.329.

“Road vehicle”: Stat. Def., Hydrocarbon Oil Duties Act 1979 (c.5) s.27(1) Sch.1.

See CART ROAD; DOCK ROAD; HIGHWAY; MAIN ROAD; PUBLIC ROAD; ROADS; STATUTE LABOUR; STREET; TURNPIKE ROAD; MAINTAIN; OCCUPATION ROAD; PROPOSE; REPAIR; ON THE ROAD.

ROAD CLOSURE EQUIPMENT. Stat. Def., Justice and Security (Northern Ireland) Act 2007 s.32(6).

ROAD CLOSURE WORKS. Stat. Def., Justice and Security (Northern Ireland) Act 2007 s.32(6).

ROADS. “Dangers of roads” in the exceptions in a bill of lading: see *Rothschild v Royal Mail Steam Packet Co*, 7 Ex. 734; DANGERS.

“Roads” in a mining lease: see *Beaufort v Bates*, 31 L.J. Ch. 481.

See ROAD.

ROADSIDE WASTE. "Roadside waste" (s.11(1) of the Local Government Act 1888 (c.41)) did not include large strips of waste land which were private property, even though they lay open to and adjoined a highway (*Curtis v Kesteven CC*, 45 Ch. D. 504).

As regards presumption of ownership: see *Gery v Redman*, 1 Q.B.D. 161. See further HIGHWAY.

ROAMING. See STRAY.

ROB. To say of a man "thou hast robbed a church", implies that the act was in a felonious manner and is actionable, especially if the speaker goes on to indicate a material robbery, e.g. by adding "and thou has pulled off the lead" (*Benson v Morley*, Cro. Jac. 153). See SACRILEGE. So, to say of the plaintiff that he has "robbed" another, is actionable slander per se, for that word sufficiently describes an offence punishable by law (*Tomlinson v Brittlebank*, 2 L.J.K.B. 105).

See ROBBERY.

ROBBERS. "The nature of the transaction" (a bill of lading) "shows clearly therefore that the word 'robbers' means not 'thieves' but robbers by force, to whom the term is more usually applied, although in common parlance it is often applied to every description of theft. It is explained also by the word with which it is associated, 'pirates', who certainly take by force and not by stealth. We have no doubt therefore that, in this bill of lading, this is the proper meaning of the word 'robbers'; and this being so, the loss in this case was not by robbers" (per Pollock C.B., *Rothschild v Royal Mail Steam Packet Co*, 7 Ex. 734, cited ROADS; see hereon 1 Maude & P. 353). See THIEVES; DANGERS; ROBBERY.

ROBBERY. "'Robberie.' *Roboria*, properly is when there is a felonious taking away of a man's goods from his person" (Co. Litt. 288A).

(Theft Act 1968 (c.60) s.8.) Stealing food from a victim of violence, but without knowledge of the violence, which had taken place in a different room, was held not to be "robbery" within the meaning of this section (*R. v Harris*, *The Times*, March 4, 1988).

Cp. PIRACY; RAPINE; ROB; ROBBERS; THEFT; THIEVES.

ROD. A "rod, pole, or perch, in length" was 512 imperial standard yards (s.11 of the Weights and Measures Act 1878 (c.49)). See YARD.

A square rod, pole, or perch was 3014 square yards (1878 Act s.12).

ROD AND LINE. A night-line was an "instrument or device" to catch fish, within s.36 of the Salmon Fishery Act 1865 (c.121) and was not within the exception of a "rod and line", nor was its use excused by a licence to use a rod and line (*Williams v Long*, 37 S.J. 253).

"Reservation of a rod for her own use": see *Re Vicker's Lease* [1947] Ch. 420, cited OWN USE,

Stat. Def., Salmon and Freshwater Fisheries Act 1975 (c.51) s.41.

Cp. "net and coble", under NET.

ROGUE AND VAGABOND. For the catalogue of those who were "rogues and vagabonds", see Vagrancy Acts 1824 (c.83) s.4; 1837 (c.38) s.2; Pauper Inmates, etc. Act 1871 (c.108) s.7; Vagrant Act Amendment Act 1873 (c.38) s.3; Vagrancy Act 1898 (c.39); Steph. Cr. (9th edn), 199; CHARGEABLE.

"Rogue" signifies an idle sturdy beggar" (Cowel). For an early, if not the first, definition of "rogues, vacaboundes, and sturdy beggers", see s.5 of the Act for

Punishment of Vagabonds 1572 (c.5). For a history of the legislation hereon, see *Att-Gen v Merthyr Tydvil* [1900] 1 Ch. 516, cited **IDLE AND DISORDERLY PERSON**.

Stat. Def., Vagrancy Act 1824 (c.83) s.4; Vagrancy Act 1935 (c.20) s.1.

An individual is a rogue and vagabond for the purposes of the Vagrancy Act 1824 if he or she has a distinct unlawful purpose in mind (*J.L. (a youth) v Director of Public Prosecutions*, T.L.R., October 8, 2007, Q.B.D.).

See **CONJURATION**; **FORTUNES**; **FOUND**; **INCORRIGIBLE ROGUE**; **VAGABOND**. See also **IDLE AND DISORDERLY PERSON**; **PERSON**; **PLACE**; **RUNNING AWAY**; **UNLAWFUL PURPOSE**; **WIFE**; **WITCHCRAFT**.

ROLE OF THE CHURCH. It is permissible to consider the interests of the regular members of the congregation who do not reside within the parish as well as the interests of local parishioners when construing the words “the role of the church as a local centre of worship and mission” in the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 s.1 (*Re St. Luke the Evangelist, Maidstone* [1995] 1 All E.R. 321).

ROLLED UP PLEA. As to what is a rolled up plea in a libel action, see *Aga Kham v The Times Publishing Co* [1924] 2 K.B. 675; *Sutherland v Stopes* [1925] A.C. 47. As to the giving of particulars, see R.S.C. Ord.19 r.22A.

ROLLING STOCK. Railway Rolling Stock Protection Act 1872 (c.50) s.2: “‘rolling stock’ includes waggons, trucks, carriages of all kinds, and locomotive engines used on railways”. See hereon *Easton Estate Co v Western Wagon Co*, 54 L.T. 735, cited **WORK**.

ROLLOVER. Stat. Def., Gambling Act 2005 (c.19) s.256.

ROLT’S ACT. Chancery Regulation Act 1862 (c.42).

ROMAN. “‘Roman Catholic’ and ‘members of the Church of Rome’ are throughout the Roman Catholic Relief Act 1829 (c.7), used as convertible terms, describing the religious denomination to which the Act applies . . . Both expressions describe the same thing, i.e. that sub-division of the general body of Christians who believe ‘One Catholic and Apostolic Church’, which also acknowledges the authority of the Pope, and accepts the decrees of the Council of Trent—in other words, the Church which professes what the Act calls ‘the Roman Catholic religion’” (per FitzGibbon L.J., *Cussen v Hynes* [1906] 1 I.R. 543, 544; see further **MONASTIC**).

A bequest “for such Roman Catholic purposes” as the trustees shall deem proper, is void for vagueness (*MacLaughlin v Campbell* [1906] 1 I.R. 588, applying *Morice v Durham (Bishop)*, 9 Ves. 399, cited **BENEVOLENCE**). Cp. **RELIGIOUS**; see also *Re Clarke* [1923] 2 Ch. 407; *Re Schoales* [1930] 2 Ch. 75.

ROMILLY’S (LORD) ACTS. Administration of Estates Act 1833 (c.104).

Leases Act 1849 (c.26), amended by Leases Act 1849 (c.17).

Judgments (Ireland) Act 1849 (c.95).

Registration of Assurances (Ireland) Act 1850 (c.72).

ROMILLY’S ACTS. Charities Procedure Act 1812 (c.101).

Corruption of Blood Act 1814 (c.145).

Treason Act 1814 (c.146).

RONCARIA. “*Roncaria* or *runcaria* signifieth land full of brambles and briers, and is derived of *roncier*, the French word which signifieth the same, and as much as *senticetum*” (Co. Litt. 5A).

ROOD. A rood of land is “1210 square yards” (Weights and Measures Act 1963 (c.31) Sch.1). See **YARD**.

Rood; rood loft; rood beam, in a church: see *St. John the Baptist, Timberhill* [1895] P. 71.

ROOFED IN. Houses had been completely roofed in, but they had shop projections with flat roofs, which roofs had only been covered with wood and had not received their intended zinc coverings; held, that the houses were “roofed in” within a building agreement (*Lowther v Heaver*, 41 Ch. D. 248).

(Betting Act 1853 (c.119) s.3.) A saloon bar was a “room” within the meaning of s.3 (*R. v Porter* [1949] 2 K.B. 128).

“Room” (Housing Act 1957 (c.56) Sch.6) means a room suitable to be used for the purpose of sleeping, and was here held to exclude a room unfit for habitation by reason of lack of ventilation and natural light (*Patel v Godal*, Bloomsbury and Marylebone County Court, December 5, 1979).

Stat. Def., Housing Act 1936 (c.51) s.68; Food and Drugs Act 1938 (c.56) s.13(5); Representation of the People Act 1983 (c.2) s.95(7).

ROOFED. “Roofed accommodation” (Car Tax Act 1983 (c.53) s.2(1)(c)(ii)). A roofed space behind the driver’s seat of a pick-up truck which had side windows, but which was not reasonably capable of accommodating a person, was not “roofed accommodation” within the meaning of this section (*R. v Commissioners of Customs and Excise, Ex p. Nissan (UK)*, *The Times*, November 23, 1987).

ROOT. A good root of title to realty requires, as a general rule, that the “first abstracted documents should purport to deal with the entire legal and equitable estates in the property; or should, at least, afford *prima facie* evidence that the title to such legal and equitable estates was, at the date of such documents, consistent with the title as subsequently deduced; they should not be dependent for their validity upon any previous instrument; and should contain nothing raising a fair doubt whether the parties claiming the interests there purported to be dealt with were in fact entitled so to deal with them” (Dart, 338).

As to an instrument exercising a power being a good root of title, see *Re Marsh and Granville*, 24 Ch. D. 11.

See PRODUCT.

ROS. See BRUERA.

ROSE’S ACT. Parochial Registers Act 1812 (c.146).

ROTATION. “Any rotation”: see LIBERTY TO CALL.

ROUGH DRAFT. A document may be a perfected agreement though headed “rough draft” (*Gray v Smith*, 43 Ch. D. 208).

ROUND. A “round” (Motor Vehicles (Wearing of Seat Belts) Regulations 1982 (SI 1982/1202) reg.4) means a series of visits or calls. A newsagent was not on a “round” within the meaning of this regulation when driving his van every morning to the same pick-up point to collect bundles of newspapers (*Webb v Crane* [1988] R.T.R. 204).

ROUND BALE. See BALE.

ROUNDING. See POINT.

ROUT. “‘Rout’ is when people doe assemble themselves together, and after doe proceed, or ride, or goe forth, or doe move by the instigation of one or more who is their leader; this is called a rout, because they doe move and proceed in routs and numbers.

“Also where many assemble themselves together upon their owne quarels and braules; as if the inhabitants of a towne will gather themselves together to breake hedges, pales or such like, to have common there, or to beat another that hath done to

ROUTE

them a common displeasure, or such like, that is a rout, and against the law, although they have not done or put in execution their mischievous intent. See the statute 1 Ma., c.5" (Termes de la Ley).

"A rout is an unlawful assembly which has made a motion towards the execution of the common purpose of the persons assembled" (Steph. Cr. (9th edn) 76).

See further Arch. Cr. (32nd edn), 1267; Rosc. Cr. (15th edn), 1039; RIOT; UNLAWFUL ASSEMBLY.

ROUTE. "A 'highway' is the physical track along which an omnibus runs, whilst a 'route' appears . . . to be an abstract conception of a line of travel between one terminus and another and to be something distinct from the highway traversed" (*per curiam* in *Kelani Valley Motor Transit Co Ltd v Colombo-Ratnapura Omnibus Co Ltd* [1946] A.C. 338, 346).

"Route" (Town Police Clauses Act 1847 (c.89) s.21) can include the imposition of one-way traffic (*Brownsea Haven Properties v Poole Corp* [1958] Ch. 574).

"28.The better interpretation of 'route' in the body of s12, therefore, is that the police can give a direction based on what they understand of the organisers' intentions and based on what they believe is reasonably possible. That may not be an objectively provable fact; it may be no more than a reasonable belief based on what has been gleaned from a variety of sources. But once it is recognised that the power to give a direction as to route precedes certain knowledge of the future route, it follows that a direction can be given in respect of what the police reasonably believe to be possible future routes at a time when the actual future route is not known. The fact that the route is uncertain, for whatever reason, necessarily implies the existence of a variety of reasonably possible routes to which the direction can apply. The crucial requirement before a preventive direction is given is therefore not the identification of the precise route to be followed, but the reasonable belief that one or more of the reasonably possible routes may lead to serious disruption." (*Powlesland v Director of Public Prosecutions* [2013] EWHC 3846 (Admin).)

See REASONABLE ROUTE; SHORTEST ROUTE.

ROVER. "Rover at sea": see PIRATE.

ROYAL. The word "royal" or the Royal Arms or crests, etc. "calculated to lead persons to think that the applicant has royal patronage or authorisation" is not to form part of a registrable trade mark (r.12 of the Trade Mark Rules 1906); see hereon *Re Royal Worcester Corset Co* [1909] 1 Ch. 459; distinguished in *Re California Fig Syrup* [1909] 2 Ch. 99. This rule prohibits the addition in a registrable trade mark of the words "incorporated by royal charter" to the name of the company, even though such addition is accurate in fact: see *Re Carron Co*, 54 S.J. 476. See Trade Marks Rules 1938 (SI 1938/661) r.16.

See CROWN; MAJESTY.

ROYAL ARMS. As to what is such a resemblance to the "Royal Arms" as to be inadmissible as part of a trade mark, see *Re König and Ebhardt* [1896] 2 Ch. 236, cited ROYAL CROWN.

ROYAL ASSENT. As to the Royal Assent which is the final sanction to perfect an Act of Parliament, see 1 Bl. Com. 184; PREROGATIVE.

ROYAL COMMISSION. Stat. Def., Olympic Symbol etc. (Protection) Act 1995 (c.32) s.4(16).

ROYAL FISH. The sturgeon, porpoise, and whale only; not salmon, or lamprey (Hale, *De Jure Maris*, Chap. 7). Blackstone omits the porpoise (1 Com. 290).

ROYAL CROWN. "What is a 'royal crown'?"—inadmissible as part of a trade mark: "It appears to me that it is that which appears on the Royal Arms, and is perfectly familiar to us all, and may be described as a circlet surmounted by two arches" (per Stirling J., *Re König and Ebhardt* [1896] 2 Ch. 236).

ROYAL FRANCHISE. See **FRANCHISE**.

ROYAL PALACE. A royal palace is a "house" belonging to the reigning monarch as part of the royal possessions (33 Hen. 8, c.12); but in order that it may be exempt from the execution of civil process it must be a house where the monarch is "then demurrant or abiding, in his royal person" (s.1, *Att-Gen v Dakin*, L.R. 4 H.L. 338). When a house has been a royal residence and is kept up as Hampton Court Palace is—e.g. is provided out of the civil list with a guard of honour and a chaplain, and the monarch has a pew in its chapel, and the gardens and vineries are kept in order at the royal expense and partly for the royal enjoyment—that is strong evidence that it is still a royal palace, but it is insufficient to constitute it a royal residence, which means a palace to which the monarch "could immediately return and reside in his own person, if he were pleased to do so" (per Ellenborough C.J., *Winter v Miles*, 10 East 580); therefore, Hampton Court Palace, though a royal palace, is not a royal residence (*Att-Gen v Dakin*, above); but in 1809, Kensington Palace was a royal residence (*Winter v Miles*, above), and Holyrood Palace is so now (*Strathmore v Laing*, 2 Wils. & Sh. 6). The Tower was a royal palace within (33 Hen. 8, c.12) (*R. v Burchet*, 3 Inst. 140), though it could hardly now be called a royal residence.

"Her Majesty's new palace at Westminster, commonly called the Houses of Parliament" (preamble to Houses of Parliament Act 1867 (c.40)), is not a royal residence, although the throne is in the House of Lords (*Coombe v De la Bere*, 22 Ch. D. 331–336).

ROYAL PECULIAR. Westminster Abbey is a Royal Peculiar (*Cole v Police Constable* 443 A [1937] 1 K.B. 316).

ROYALTIES. "In its primary and natural sense 'royalties' is merely the English translation or equivalent of '*regalitates*', '*jura regalia*', '*jura regia*'. 'Regalia' and '*regalitates*', according to Ducange, are '*jura regia*'; and Spelman (Gloss. Arch.) says, '*regalia dicuntur jura omnia ad fiscum spectantia*'. The subject was discussed with much fullness of learning in *Dyke v Walford* (5 Moo. P.C. 434), where a Crown grant of *jura regalia*, belonging to the County Palatine of Lancaster, was held to pass the right to *bona vacantia*. 'That it is a *jus* (said Mr Ellis in his able argument, *ibid.* 480) is indisputable; it must also be *regale*; for the Crown holds it generally through England by royal prerogative and it goes to the successor of the Crown, not to the heir or personal representative of the sovereign. It stands on the same footing as the right to escheats, to the land between high and low water mark, to felons' goods, to treasure trove and other analogous rights'. With this statement of the law their lordships agree" (per Selborne C., *Att-Gen Ontario v Mercer*, 8 App. Cas. 767). So "royalties", in a grant from the Crown, will include gold and silver mines (*Att-Gen British Columbia v Att-Gen Canada*, 14 App. Cas. 295; see further *Mines Case*, 1 Plowd. 330). See further *Listowel v Gibbings*, 9 I.C.L.R. 223. Cp. **FRANCHISE**.

In *Keble v Hickringill* (11 Mod. 74) the court said that "royalty" included free warren; but in *Pannell v Mill* (3 C.B. 633), Channell, arg., said that "*Pickering v Noyes* (4 B. & C. 639) is a distinct authority to show that 'royalties' will not include free warren". In either view a reservation in a lease of all timber trees, etc. "and also all

ROYALTY

royalties whatsoever to the premises belonging or in anywise appertaining”, will not reserve a right to enter on the lands to pursue kill and take birds of warren (*Pannell v Mill*, 16 L.J.C.P. 91).

In its secondary senses the word “royalties” signifies, in mining leases, that part of the *reddendum* which is variable, and depends upon the quantity of minerals gotten (*Att-Gen Ontario v Mercer*, above; see hereon *Greville-Nugent v Mackenzie* [1900] A.C. 83, cited RENT; *Listowel v Gibbings*, above); or the agreed payment to a patentee on every article made according to the patent, on which see *Re Graydon* [1896] 1 Q.B. 417, cited PERSONAL LABOUR.

“Rights or privileges for which remuneration is payable in the form of a royalty”: see *Perpetual Trustee Co v Pacific Coal Co Pty* [1956] A.C. 165.

The power to appoint a gamekeeper given, by Game Act 1671 (c.25), to lords of “manors and other royalties”, was limited, so far as “royalties” were concerned, to such royalties as were inferior to manors (*Ailesbury v Pattison*, 1 Doug. 28). See Game Act 1831 (c.32) s.13.

An assignment of film rights of a play for a period of 10 years was made in return for a lump sum; this sum was held to be a capital receipt and not a sum received “on account of royalties”, and was therefore not subject to income tax (*Nethersole v Withers* [1946] 1 All E.R. 711).

“Securing the payment of royalties”, under s.19(6) of the Copyright Act 1911 (c.46): see *Monckton v Pathé Freres Pathephone* [1914] 1 K.B. 395, cited SECURE.

As to deduction of patent royalties, in respect of income tax, see *Lanston Monotype Corp v Anderson* [1911] 2 K.B. 15; *Boyd v Havelock*, 7 Tax Cas. 321.

Stat. Def., Mineral Workings Act 1951 (c.60) s.41(1).

“Royalty” and “royalty owner”: see Mines (Working Facilities and Support) Act 1923 (c.20) s.15.

“Royalty value”: Stat. Def., Capital Allowances Act 1968 (c.3) s.60(11).

ROYALTY. Stat. Def., Corporation Tax Act 2009 s.714.

RUBBISH. “Rubbish” (s.11 of the Harbours Act 1814 (c.159)) could only be made applicable to deposits of such a nature and of such a quantity as could be washed down to the sea (*United Alkali Co v Simpson* [1894] 2 Q.B. 116).

“Rubbish” (Paving, etc. Streets of Metropolis Act 1817 (c. xxix) s.59) was things which had become valueless to the owner and the property in which he had abandoned (*Filbey v Combe*, 6 L.J.M.C. 132).

“Dust, ashes, and rubbish” of “houses and tenements of inhabitants” (s.87 of the Towns Improvement Clauses Act 1847 (c.34), did not comprise dust, ashes, or rubbish, of manufactories (*Lyndon v Stanbridge*, 26 L.J. Ex. 386; see further REFUSE).

“Rubbish resulting from the demolition” (Public Health Act 1936 (c.49) s.58) does not include derelict machinery upon which the demolition has had no effect (*McVittie v Bolton Corp* [1945] K.B. 281). “Rubbish” has the meaning given in the *Oxford English Dictionary*, namely, “waste or refuse material... such as results from the decay or repair of buildings, debris, litter, refuse” (*McVitte* at 288).

Stat. Def., Public Health Act 1961 (c.64) s.34(5).

RULE. “Rules of the organisation” (Industrial Relations Act 1971 (c.72) s.107(3)(b)). These words were held to mean rules that regulate the right of members of an organisation, not those which are merely statements of the organisation’s aims. A

union's rule which required it to "improve the conditions and protect the interests of its members" was held not to be a "rule" within the meaning of s.107 (*Oddy v TSSA* [1973] I.C.R. 524).

Stat. Def., Employment Act 1982 (c.46) s.15.

The Local Elections (Principal Areas) (England and Wales) Rules 2006 do not include a "rule" about how to mark a ballot paper, only guidance (*Pilling v Reynolds* [2008] EWHC 316 (QB)).

"8. In *R (Alvi) v Secretary of State for the Home Department* [2012] 1 WLR 2208, which was heard with *Munir* and decided on the same day, this court considered in detail what constituted a rule dealing with the practice to be followed for regulating entry into and stay in the United Kingdom. The principal judgments were delivered by Lord Hope and Lord Dyson. They were agreed upon the basic requirement of s.3(2) and on the test for distinguishing a 'rule' from something that was merely advisory or explanatory, although not on every aspect of its application to the facts of that case. Lord Walker of Gestingthorpe, Lord Clarke of Stone-cum-Ebony and Lord Wilson delivered concurring judgments agreeing with both of them on the points on which they were agreed. Lord Hope put the point in this way at para 41:

'The content of the rules is prescribed by ss. 1(4) and 3(2) of the 1971 Act in a way that leaves matters other than those to which they refer to her discretion. The scope of the duty that then follows depends on the meaning that is to be given to the provisions of the statute. What s.3(2) requires is that there must be laid before Parliament statements of the rules, and of any changes to the rules, as to the practice to be followed in the administration of the Act for regulating the control of entry into and stay in the United Kingdom of persons who require leave to enter. The Secretary of State's duty is expressed in the broadest terms. A contrast may be drawn between the rules and the instructions (not inconsistent with the rules) which the Secretary may give to immigration officers under para.1(3) of Sch.2 to the 1971 Act. As Sedley LJ said in *ZH (Bangladesh) v Secretary of State for the Home Department* [2009] Imm AR 450, para.32, the instructions do not have, and cannot be treated as if they possessed, the force of law. The Act does not require those instructions or documents which give guidance of various kinds to caseworkers, of which there are very many, to be laid before Parliament. But the rules must be. So everything which is in the nature of a rule as to the practice to be followed in the administration of the Act is subject to this requirement.'

At para.94, Lord Dyson, in a conclusion expressly endorsed by Lord Hope, at para.57, said:

'a rule is any requirement which a migrant must satisfy as a condition of being given leave to enter or leave to remain, as well as any provision "as to the period for which leave is to be given and the conditions to be attached in different circumstances" (there can be no doubt about the latter since it is expressly provided for in s.3(2)). I would exclude from the definition any procedural requirements which do not have to be satisfied as a condition of the grant of leave to enter or remain. But it seems to me that any requirement which, if not satisfied by the migrant, will lead to an application for leave to enter or remain being refused is a rule within the meaning of s.3(2). That is what Parliament was interested in when it enacted s.3(2). It wanted to have a say in the rules which set out the basis on which these applications were to be determined.'" (*New London College Ltd, R. (on the application of) v Secretary of State for the Home Department* [2013] UKSC 51.)

RULE

“Good rule and government”: see PEACE.

“Rule”, or “order” (s.18 of the Judgments Act 1838 (c.110)): see *Shaw v Neale*, 6 H.L. Cas. 581; see further RECOVERED OR PRESERVED.

See GENERAL RULE.

RULE OF LAW. “48. The Rule of Law is undoubtedly a basic principle, perhaps the basic principle, of our unwritten constitution and of the Convention. In his lecture entitled ‘The Rule of Law’ published in [2007] CLJ 67, Lord Bingham emphasised the importance of the law being ‘accessible, and so far as possible intelligible, clear and predictable.’ Professor Paul Craig, in his paper on the Rule of Law appended to the Report of the Select Committee of the House of Lords (HL Paper 151), referred to the importance of the law being ‘capable of guiding one’s conduct in order that one can plan one’s life’, and of clarity as to the consequences of breach of the rule of law. So far as Convention jurisprudence is concerned, it is sufficient to refer to the preamble to the Convention, to para.34 of the judgment of the European Court of Human Rights in *Golder v UK* (1975) 1 EHRR 524, and to the judgment of the Court in *The Sunday Times v UK* Case 9538/74 [1979] ECHR 1 at para.49: 49. In the Court’s opinion, the following are two of the requirements that flow from the expression ‘prescribed by law’. Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a ‘law’ unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able—if need be with appropriate advice—to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice.” (*R. (on the application of Heather Moor & Edgcomb Ltd) v Financial Ombudsman Service* [2008] EWCA Civ 642.)

RULES. A statutory code may be described as a set of rules, without necessarily being subordinate legislation in a formal sense; they may amount to “law” in one sense, without being caught by all references to law. So, for example, the Immigration Rules are not subordinate legislation or rules to which the Interpretation Act 1978 applies (*M.O. (Nigeria) v Home Secretary* [2008] EWCA Civ 308).

RULES OF COURT. Stat. Def., Interpretation Act 1978 (c.30) Sch.1; Limitation Act 1980 (c.58) s.35(9); Civil Jurisdiction and Judgments Act 1982 (c.27) s.50.

RUM. “Rum”, sold simply as such, was not to be reduced more than 25 degrees under proof (Sale of Food and Drugs Act Amendment Act 1879 (c.30) s.6); but see GIN. See hereon *Dawes v Wilkinson* [1907] 1 K.B. 278.

RUN. “Trains to run in conjunction” with other trains: see *Caledonian Railway v Great Northern Railway*, 2 Ry. & Can. Tr. Cas. 383.

RUN OF THE PLAY. As to this phrase in the contract of a musician in the theatrical profession, see *Gubertini v Waller* [1947] 1 All E.R. 746.

RUN WITH THE LAND. “A covenant is said to ‘run with the land’ when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that land. A covenant is said to ‘run with the reversion’ when either the liability to

perform it, or the right to take advantage of it, passes to the assignee of that reversion" (Woodf. (24th edn), 549, citing *Spencer's Case*, 5 Rep. 16 a; see thereon 1 Sm. L.C. 65).

Under a lease, "no covenant runs with the land except it touch the thing demised" (per Martin B., *Stevens v Copp*, L.R. 4 Ex. 25). See Touch. See further *Dewar v Goodman* [1909] A.C. 72, and cases therein cited; *Ricketts v Enfield Churchwardens* [1909] 1 Ch. 544, cited ASSIGNS.

See as to what covenants run with the land, Platt Cov., Pt 4, Ch.1, s.5; Pollock's Principles of Contract (7th edn), 237 et seq.; Woodf. (24th edn), 549 et seq.; *Rogers v Hosegood* [1900] 2 Ch. 406, cited HOUSE; *Forster v Elvet Colliery Co* [1908] 1 K.B. 629, cited ASSIGNS; *Torbay Hotels v Jenkins*, 137 L.T. 248; *Grant v Edmonson* [1931] 1 Ch. 1; *Austerberry v Oldham*, 29 Ch. D. 750, cited HIGHWAY; "privity of estate", PRIVY; ASSIGNS; SPIRITUOUS LIQUOR; *Shayler v Woolf* [1946] Ch. 320; *Breams Property Investment Co v Stroulger* [1948] 2 K.B. 1; *Smith and Snipes Hall Farm v River Douglas Catchment Board* [1949] 2 K.B. 500.

As to covenants running with, or binding on, the reversion, see *Muller v Trafford* [1901] 1 Ch. 61, and *Woodall v Clifton* [1905] 2 Ch. 257, both cited PERPETUITY. The liability of a lessor or lessee is not extinguished by the assignment, in the one case, of the reversion, or, in the other, of the term (*Stuart v Joy* [1904] 1 K.B. 362).

A purchaser with notice is charged with a covenant (*Tulk v Moxhay*, 18 L.J. Ch. 83), if it be of restrictive character (*Haywood v Brunswick Building Society*, 8 Q.B.D. 403; *Hall v Ewin*, 37 Ch. D. 74; *London & South Western Railway v Gamm*, 20 Ch. D. 562; *Mackenzie v Childers*, 43 Ch. D. 265; *Andrew v Aitken*, 22 Ch. D. 218; *Warton v Robinson*, 29 S.J. 606, 607). See further *Osborne v Bradley* [1903] 2 Ch. 446; see also *Elliston v Reacher* [1908] 2 Ch. 665, cited INTENDED. But a purchaser is not charged if the covenant is merely personal and collateral (*Formby v Barker* [1903] 2 Ch. 539). See RESTRICTIVE COVENANT; *Chambers v Randall* [1923] 1 Ch. 149.

A person not a party to a deed may sometimes enforce a covenant therein contained, if such covenant runs with the land: see *Dyson v Forster* [1909] A.C. 98, cited ASSIGNS. See Law of Property Act 1925 (c.20) ss.78–80 and 142.

RUNAGATE. To call one a "runagate" is not slander unless there be special damage (*Cockaine v Hopkins*, 2 Lev. 214).

RUNCARIA. See RONCARIA.

RUNNING AGREEMENT. Merchant Shipping Act 1894 (c.60) s.115(5): a running agreement with the crew of a foreign-going ship (see FOREIGN) is where the voyages of the ship average less than six months in duration, and the agreement extends over two or more voyages, and see hereon subss.(6), (7), (8) and (9) of this section.

RUNNING AWAY. The act of vagrancy by "running away" and leaving wife or child was chargeable to the parish (s.4 of the Vagrancy Act 1824 (c.83)).

"Running away" (Mines and Quarries Act 1954 (c.70) s.41). Where, by design, empty trams are made to run down a gradient to the point where they are coupled to others, they cannot be "running away" withing the meaning of this section (*Jones v National Coal Board* [1965] 1 W.L.R. 532).

See DESERTION; PERSISTENT.

RUNNING DAYS. "The meaning of 'running days' is that the freighter shall not waste time in loading and unloading" (per Abinger C.B., *Pringle v Mollett*, 6 M. & W. 83).

RUNNING

“Running day saved”: see *Re Royal Mail Steam Packet Co* [1910] 1 K.B. 600.

See DAYS; WORKING DAYS; DEMURRAGE.

RUNNING FREE. In the Regulations for Preventing Collisions at Sea 1910 (No.1113), “running free” is probably used as opposed to close-hauled (1 Maude & P. 599). See hereon *The Privateer*, 9 L.R. Ir. 105.

RUNNING LANDING NUMBERS. “These words are in practice treated as referring to the order in which bales are entered in the dock landing book” (Lowndes, 200).

RUNNING POWERS. See *Ayles v South Eastern Railway*, L.R. 3 Ex. 146.

RUNNING REPAIRS. See REPAIRS.

RURAL. Rural deans “seem to have been deputies of the bishop, planted all round his diocese better to inspect the conduct of the parochial clergy” (1 Bl. Com. 383, 384); their duties “are now clearly those of inspection and report only, and are ancillary to, and not conflicting with, those of the archdeacon” (Phil. Ecc. Law, 213). Cp. DEAN. Stat. Def., Ecclesiastical Dilapidations Act 1871 (c.43) s.3.

RUSCARIA. “A man grants *omnes ruscarias suas*, the soile where *rusci*, i.e. kneholme, or butcher’s pricks, or broome doe growe shall passe, and so in the verse in the register it is called; but in F.N.B., fol. 2, in the verse *pischaria* is put instead of *ruscaria*” (Co. Litt. 5A).

RUSSELL-GURNEY’S ACTS. Criminal Law Amendment Act 1867 (c.35).

Larceny Act 1868 (c.116).

Medical Act 1876 (c.41), enabling women to take medical degrees.

RUSSIAN CURRENCY. In *Lindsay, Gracie & Co v Russian Bank for Foreign Trade*, 34 T.L.R. 443, Russian currency was held to include Imperial Russian notes and Kerensky notes but not Bolshevik notes.

RUSSELL’S (LORD JOHN) ACTS. Corporation and Test Act 1828 (c.17).

Representation of the People Acts 1832 (cc. 45, 65, 88).

For the Reform of Municipal Corporations 1835 (c.76).

Tithe Act 1836 (c.71).

Marriage Act 1836 (c.85).

Births and Deaths Registration Act 1836 (c.86).

For the Removal of Jewish Disabilities 1845 (c.52).

RUST. As to the frequent exception in a bill of lading of “rust, leakage, and breakage”, see LEAKAGE AND BREAKAGE.

RUTHERFURD’S (LORD) ACTS. Entail Amendment Act 1848 (c.36). Court of Session Act 1850 (c.36).

RUTLAND. Statute of Rutland: see DIVIDEND.

S

SE. A new form of body corporate whose establishment is provided for by the law of the European Communities and recognised in domestic law of the Member States: see Council Regulation (EC) 2157/2001 on the Statute for a European Company (*Societas Europaea*) and, for an example of relevant domestic law in the UK, ss.140E–140G of the Taxation of Chargeable Gains Act 1992 inserted by Finance (No.2) Act 2005 s.51.

SACRAMENT. “The word *sacramentum* signified, in its general meaning, an oath. The later fathers of the Church applied the term to designate a holy mystery. The English Church expresses most clearly the Catholic doctrine defining a sacrament to be ‘an outward and visible sign of an inward spiritual grace given unto us, ordained by Christ Himself, as a means whereby we receive the same, and a pledge to assure us thereof’” (PHIL. ECC. LAW, 483).

See CHURCH; RITE.

SACRAMENT HOUSE. So long as the elements of the sacrament are required for communion they may be reserved in a safe and seemly manner, such as in an aumbry or sacrament house and in granting a faculty for this the court was not required to specify any distance between the proposed site for reservation and the altar (*Re S. Thomas, Pennywell* [1995] 2 W.L.R. 154).

SACRIFICE. “Sacrifice” has been applied to the Lord’s Supper by divines of eminence, not in the sense of a true propitiatory or atoning sacrifice effectual as a satisfaction for sin, but in the sense of a rite which calls to remembrance and represents before God the one true sacrifice (*Sheppard v Bennett*, L.R. 4 P.C. 371). But in the 39 Articles “sacrifice” means the atoning sacrifice (*Voysey v Noble* 40 L.J. Ecc. 22). See REAL PRESENCE.

See GENERAL AVERAGE SACRIFICE.

SACRILEGE. Sacrilege was the “felonious taking of any goods out of a parish church, or other church or chapel” (Repeal of Statutes as to Treason, etc. Act 1547 (1 Edw. 6, c.12) s.10; 2 Hale P.C. 365); and such goods were not confined to things used for divine service—the felonious taking of anything out of, or belonging to (*Benson v Morley*, Cro. Jac. 153, cited ROB) a church or chapel, which taking was a “violation of the sanctity of the place”, was sacrilege (*R. v Catherine Rourke*, Russ. & Ry. 386); in this last case the woman was convicted at Kingston Lent Assizes, 1819, of stealing an iron pot (value 6d.) used for burning charcoal to air the vaults of the church, and a snatch-book (value 4s.) for raising weights when the bells wanted repairing; and the judges (Easter Term, 1819) were unanimously of opinion “that a capital sentence ought to be passed on the prisoner”.

SACRISTAN. See SEXTON.

SADDLE. See BELONGING.

SADDLER. Stat. Def., Medicines (Exemption for Merchants in Veterinary Drugs) Order 1998 (SI 1998/1044) art.2(1).

SADISTIC. It is not necessary that conduct have a sexual element for it to be sadistic (*R. v Swindon* [2006] EWCA Crim 513).

SAFE. “Safe and practicable” for navigation: see *The Oporto* [1897] P. 249.

As to the usual phrase in a marine insurance, “until she hath moored at anchor 24 hours in good safety”, see *Lidgett v Secretan*, L.R. 5 C.P. 190, and the authorities there cited and discussed. See also *Cornfoot v Royal Exchange Assurance* [1904] 1 K.B. 40, cited DAYS.

As to a warranty of a ship’s “safety”, or being “well”, on a stated day, see *Blackhurst v Cockell*, 3 T.R. 360. “It is sufficient to be safe at any time during that day” (Marine Insurance Act 1906 (c.41) s.88).

“Safe working of the ship” (Docks Regulations 1934 (SI 1934/279) reg.26). This might be “impeded” within the meaning of this regulation by putting more fencing round a winch than was customarily there (*Ritchie v Irving TG & Co* [1952] W.N. 550).

“Safely be done” (Building (Safety, Health and Welfare) Regulations 1948 (No.1145) reg.5). The test whether work can “safely be done” within this regulation, is whether, on all the facts known or which ought to be known, the doing of the work involved foreseeable risk (*Curran v Neill (William) & Son (St. Helens)* [1961] 1 W.L.R. 1069).

“Safely be done” (Construction (General Provisions) Regulations 1961 (No.1580) reg.7(2)). A skilled steel erector can do his work “safely” within the meaning of this regulation while sitting astride a girder (*Woods v Power Gas Corporation* (1969) 8 K.I.R. 834).

“Safe means of access” (Factories Act 1961 (c.34) s.29(1)). An employer who had an established system for ensuring safe access at his factory was not in breach of his duty under this section by failing to ensure in severe weather conditions that every area had been gritted by the start of the working day (*Gitsam v CH Pearce & Sons, The Times*, February 11, 1991). The test of keeping a place of work safe for any person working there, under s.29(1), is a strict one, and there is no obligation in a claim for breach of statutory duty under the section for the claimant to establish that the question of reasonable foreseeability arises in consideration of whether the place of work is safe (*Larner v British Steel, The Times*, February 19, 1993).

“Safe system of work”: the mere fact that a system of work was hazardous did not render it unsafe (*Nilsson v Redditch BC* [1994] 12 C.L. 467).

The word “safe” should not be equated with “not dangerous” simply because they were antonyms but should be construed with reference and an employer’s obligation was to prevent any risk of injury arising from the state or condition of the work place and not just to prevent risks that were reasonably foreseeable (*Mains v Uniroyal Englebert Tyres (IH), The Scotsman*, June 14, 1995; applied in *R. v Secretary of State for the Home Department, Ex p. Kara (Hussein)* [1995] Imm.A.R. 584).

“Secure that the ship is operated in a safe manner” (Merchant Shipping Act 1988 (c.12) s.31(1)). A shipowner is under a duty to take all reasonable steps to ensure that his ship is operated in a safe manner but, in the absence of evidence relating to decisions by the company’s management, liability is not imposed on the owner for every error or omission of every employee, however junior (*Seaboard Offshore v Secretary of State for Transport* [1993] 1 W.L.R. 1025).

Safety is necessarily a relative concept. There is no such thing as complete safety, and the degree of risk acceptable depends on the legislative and factual contexts (*R.(B.) v Calderdale MBC* [2004] 1 W.L.R. 2017, CA).

Stat. Def., Consumer Protection Act 1987 (c.43) s.19(1).

Stat. Def., Consumer Safety Act 1978 (c.38) s.9.

"Safely afloat": see SAFE PORT.

See SAFELY; SAFETY.

See SAFE PORT; NEAR THERETO AS SHE MAY SAFELY GET; PLACE; UNSAFE.

SAFE BERTH. A berth hung with fenders which, because of their construction, damaged the hull of a ship was not a "safe berth" (*Prekookeanska Plovidba v Felstar Shipping Corp; The Carnival, The Independent*, January 23, 1992).

SAFE CUSTODY. "Safe custody" (s.76 of the Larceny Act 1861 (24 & 25 Vict., c.96)): see *R. v Cooper*, L.R. 2 C.C.R. 123; *R. v Fullagar*, 41 L.T. 448; *R. v Newman*, 8 Q.B.D. 706.

See EXPRESSLY FOR SAFE CUSTODY.

SAFE LOADING PLACE. A place where a vessel can be rendered safe for loading by reasonable measures of precaution, is a "safe loading place" within the terms of a charterparty (*Smith v Dart*, 14 Q.B.D. 105).

Where a charterparty provided that cargo should only be handled at ports where the vessel could "always lie safely afloat", these words were concerned only with the marine characteristics of the ports (*Vardinoyannis v Egyptian General Petroleum Corporation; The Evaggelos TH* [1971] 2 Lloyd's Rep. 200). The port of Destrehan on the Mississippi River was held to be a safe port within the terms of a charterparty because, although there was a known possibility that a ship of the draught of the one in question might be delayed in departure by the varying depth of the river, the port was reachable at the time it was nominated (*Unitramp v Garnac Grain Co, "The Hermine"* [1979] 1 Lloyd's Rep. 212). Safe means safe qua port and there was no breach of warranty where a ship was delayed by the "abnormal occurrence" of a subsequent outbreak of local war in a port which was safe when nominated and at the time of the ship's arrival (*Kodross Shipping Corp of Monrovia v Empress Cubana de Fletes, The Evia* [1983] A.C. 736). Where a port became unsafe after a proper order had been given to a vessel to proceed to that port at a time when it was still prospectively safe, the charterers were held to have breached the "safe port" clause in the charterparty because they failed to countermand the order when the port became unsafe before the vessel reached it (*UniOcean Lines Pte v C-Trade SA, The Lucille* [1984] 1 Lloyd's Rep. 244).

"Safe port" (Shelltime 3 Form of Charter cl.3). A port which had only suffered one seaborne guerilla attack on shipping may nevertheless be categorised as an unsafe port within the meaning of this clause (*The Saga Cob, The Financial Times*, July 9, 1991).

See NEAR THERETO AS SHE MAY SAFELY GET.

SAFEGUARDING WELFARE OF CHILD. See WELFARE OF CHILD.

SAFELY. "Can safely be administered" (Medicines Act 1968 (c.67) s.28(3)(g)). There is no absolute standard of safety. Few drugs are entirely free from the risk of inducing side effects in some patients. The question has always to be whether the degree of risk is sufficiently low to be acceptable, and that cannot be considered without an appreciation of the benefits to be gained from taking a risk of that degree (*R. v Medicines Commission, Ex p. Organon Laboratories* [1990] C.O.D. 272).

SAFETY-GLASS. This is laminated glass with interposed plastic (*Grenfell v Meyrowitz* [1936] 2 All E.R. 1313).

SAID. "Said", or "the said", has reference to the last antecedent (*Esdaile v Maclean*, 16 L.J. Ex. 71; see also *Wigmore v Wigmore* [1872] W.N. 93), e.g. see *Hall v Warren*, 9 H.L. Cas. 420. But, on a context, an opposite conclusion was reached in *R. v Countesthorpe*, 2 B. & Ad. 487, and in *Healy v Healy*, Ir. Rep. 9 Eq. 418. See also *Shepherd's Trustees v Shepherd* (1945) S.C. 60.

"My said sisters": as to the effect of this phrase in a will, see *Mackintosh (or Miller) v Gerard* [1947] A.C. 461.

"Anything said or done" (Police and Criminal Evidence Act 1984 (c.60) s.76(2)(b)) is limited to something external to the person making the confession, and to something which is likely to have influenced him (*R. v Goldenberg* (1989) 88 Cr.App.R. 285). See also UNRELIABLE.

See AFORESAID; DEMISED. Cp. SUCH.

SAID DAUGHTERS. For the construction of the words "said five daughters" in a will, see *Re Harding*, 92 L.J. Ch. 251.

SAID ESTATE. See *Markham v Hutt* [1866] W.N. 17.

SAID TRUSTEES. "The power of appointment of new trustees is sometimes given 'to the said trustees', and then the question arises whether a sole survivor can appoint. It is conceived that 'the said trustees' means the persons or person representing the trust for the time being under the settlement, and that the survivor can therefore exercise the power" (Lewin (15th edn) 327). So, a power of sale to "my said trustees", is exerciseable by the trustees for the time being (*Re Smith, Eastick v Smith* [1904] 1 Ch. 139; also cited TRUSTEE).

SAIL. "It is clear that a warranty to 'sail', without the word 'from', is not complied with by the vessel's raising her anchor, getting under sail, and moving onwards, unless at the time of the performance of these acts she has everything ready for the performance of the voyage, and such acts are done as the commencement of it, nothing remaining to be done afterwards" (per Abbott C.J., *Lang v Anderdon*, 3 L.J.O.S.K.B. 62; see on this case *Graham v Barras*, 5 B. & Ad. 1011).

"Sail" is a technical word, and means "start on voyage" (per Byles J., *Barker v McAndrew*, 34 L.J.C.P. 195; see hereon 1 Maude & P. (4th edn) 500; *Thompson v Gillespy*, 24 L.J.Q.B. 340). "A vessel has sailed the moment she is unmoored and got under-way in complete preparation for the voyage, with the purpose of proceeding to sea without further delay at the port of departure. Lord Mansfield said, 'to constitute a sailing under this warranty, the vessel at the time of sailing must be, in the contemplation of the captain, at absolute and entire liberty to proceed to her port of delivery in a mathematical line if it were possible' (*Thellusson v Staples*, 1 Doug. 366, n.)—referring, probably, to her being ready so far as her preparations and equipments for the voyages are concerned" (Phillips on Insurance, s.772, cited and adopted by Mathew J., *Sea Insurance v Blogg* [1898] 1 Q.B. 27; 2 Q.B. 398; see further READY FOR SEA). Therefore, where a vessel, being fully equipped, left her moorings with the intention of proceeding to sea, she was held to have then sailed, although, owing to the wind, she stayed for two days about half a mile nearer the mouth of the harbour (*Cockrane v Fisher*, 4 L.J. Ex. 328); *secus*, where the movement from the mooring towards the mouth of the harbour was merely for the more convenient sailing at a later time (*Sea Insurance v Blogg*, above), or where the vessel starts, but, being under-manned, is compelled to put back (*Sharp v Gibbs*, 1 H. & N. 801).

An agreement “to sail”, without more, means to sail at once, i.e. within a reasonable time, “having regard to the weather and the possibility of moving the ship” (per Esher M.R., *Oriental SS Co v Tylor* [1893] 2 Q.B. 518).

Cp. LEAVE; but “depart” and “despatch” are, semble, synonymous with “sail”.

“Now sailed, or about to sail”: see NOW.

See further FINAL SAILING; VOYAGE.

SAIL WITH CONVOY. See CONVOY.

SAILING. See SAIL; FINAL SAILING.

SAILING VESSEL. Sailing vessel “under-way”, or “at anchor”: see *The Indian Chief*, 14 P.D. 24, cited UNDER-WAY.

See VESSEL. Cp. STEAMSHIP.

SAILOR. See SEAMAN; MARINER.

ST. LEONARDS’ (LORD) ACTS. Wills Act Amendment Act 1852 (c.24).

Land Tax Redemption (No.2) Act 1853 (c.117).

Law of Property Amendment Acts 1859 and 1860 (c.35), (c.38).

Crown Debts and Judgments Act 1860 (c.115).

Sale of Land by Auction Act 1867 (c.48).

See further SUGDEN’S ACTS.

SAISIE CONSERVATOIRE. See *The Goulandris*, 96 L.J.P. 85.

SAKE. “The privilege called ‘sake’ is for a man to have the amerciements of his tenants in his owne court” (Termes de la Ley).

Cp. SOKE.

SALAMI SLICING. “4. On behalf of the Secretary of State Mr Forsdick submitted that ‘salami slicing’ is the term applied to the splitting up of projects into small sub-projects with the effect of each part coming below the thresholds for Environmental Impact Assessment (‘EIA’) and therefore avoiding (whether deliberately or not) the need for EIA. In the two leading Spanish cases a single long distance rail construction project was split into small ‘local’ projects with the result that the section in question . . . and the project as a whole) was not subject to EIA (*Commission v Spain* [2005] Env LR 20 [52]-[54] and a single project for the upgrade of the Madrid Ring road was split into 15 sub-projects with the result that the section in question (or the project as a whole) was not subject to EIA (*Ecologistas nen Accion v Ayuntamiento de Madid* [2009] PTSR 458 [25], [44]-[45]. In both cases it was held that that approach was impermissible under the Environmental Impact Assessment Directive 2011/92/EU (‘the Directive’). It impermissibly constituted what is commonly called ‘salami slicing’. The true project was in each case in fact the wider whole—the complete ring road or the long distance train line.” (R. (*Save Britain’s Heritage*) v *Secretary of State for Communities and Local Government* [2013] EWHC 2268 (Admin).)

SALARY. “‘Salarie’ is a word often used in our bookes, and it signifies a recompence or consideration given unto any man for his paines bestowed upon another mans business” (Termes de la Ley, Salarie). See further Jacob.

“Salary” (National Insurance (Classification) Regulations 1948 (No.1425) Sch.1 Pt 1 (A) para.2 (b)). A school dentist regularly working six three-hour sessions per week at a fixed rate per session is “remunerated by salary” (*Greater London Council v Minister of Social Security* [1971] 1 W.L.R. 641).

SALARY

“Salaried partner” is not a term of art, and whether such a partner is a partner in the true sense depends on the substance of the relationship and the facts of the particular case (*Stekel v Ellice* [1973] 1 W.L.R. 191).

“Salary or remuneration”: see REMUNERATION.

See FULL SALARIES; IN RECEIPT; WAGES; WAGES OR SALARY. Cp. STIPEND.

SALARY (FINAL SALARY). Stat. Def., Public Service Pensions Act (Northern Ireland) 2014 s.34.

SALE; SELL; SOLD. “Sale” undoubtedly, in general, implies an exchange for money; and is so defined in Benjamin on Sale” (per Wills, J., *Coats v Inland Revenue Commissioners* [1897] 2 Q.B. 423; see further *Great Northern Railway v Inland Revenue Commissioners* [1899] 2 Q.B. 652, cited RELEASE; *Paine v Cork Co* 69 L.J. Ch. 158; *John Foster & Sons v IRC* [1984] 1 Q.B. 516; *Simpson v Connolly* [1953] 1 W.L.R. 911; *Robshaw Brothers v Mayor* [1957] Ch. 125; *Littlewoods Mail Order Stores v IRC* [1963] A.C. 135).

A “sale” means the exchanging of property for money and applies to a sale of land and to a sale of chattels equally. An agreement to extinguish an existing debt if land is transferred is not a contract for the sale of land (*Simpson v Connolly* [1953] 1 W.L.R. 911).

As to the meaning to be attached to the word “sell” in s.13 of the Markets and Fairs Clauses Act 1847 (c.14), see *Lambert v Rowe* [1914] 1 K.B. 38, in which case the court, although construing a penal section, said that the word must be given a popular and not a strict legal meaning.

A person “sells” a firearm within the meaning of ss.11 and 19 of the Firearms Act 1937 (c.12) if the property passes, even though he retains the right to possession (*Watts v Seymour* [1967] 2 Q.B. 647).

“Sale of the liquor” (Licensing Act 1953 (c.46) s.154(1); Licensing Act 1964 (c.26) s.196(1)). Where guests at a party had previously paid fixed sums into a “kitty” and then, at the party, helped themselves to intoxicating drinks without at the time making any payment there was, nevertheless a “Sale” of liquor within the meaning of this section (*Doak v Bedford* [1964] 2 Q.B. 587).

A power to “sell, means, in the absence of any context, a power to sell for money; and a person who exercises such a power is bound to sell for money” (per Stirling J., *Paine v Cork Co*, 69 L.J. Ch. 158; see *Coats v Inland Revenue Commissioners* [1897] 2 Q.B. 423, and *Re Ware* [1892] 1 Ch. 344, both cited SALE). The power to “sell” of a liquidator in the winding-up of a company was so restricted under s.95 of the Companies Act 1862 (c.89), except as it was widened by s.161; that latter section was the limit of his power thereunder and it was not competent for a company, even by its articles, to confer additional power or to deprive dissentient shareholders of their rights under the section (*Paine v Cork Co* [1900] 1 Ch. 308; see Companies Act 1948 (c.38) s.245); but where a sale was under the memorandum of association, see *Doughty v Lomagunda Reefs* [1902] 2 Ch. 837.

“Sells” (Food and Drugs Act 1955 (c.16) s.2(1)). A pharmaceutical chemist who supplied a medicine under a National Health Service prescription was held not to have “sold” it to the executive council (*Appleby v Sleep* [1968] 1 W.L.R. 948).

“Sells pre-packed food” (Pre-packed Food (Weights and Measures: Marking) Order 1950 (No.1125) art.6). A person who sells as agent for a named principal, and who,

under the contract, has no right to take possession of the goods or examine them is not a seller within the meaning of this Order (*Lester v Balfour Williamson Merchant Shippers* [1953] 2 Q.B. 168).

"Sell the goodwill" (National Health Service Act 1946 (c.81) s.35(1)). A covenant by a retiring partner not to treat or attend present or past patients of the partnership, and for which there was no other valid consideration, was a sale of the goodwill within the meaning of this section (*Macfarlane v Kent* [1965] 1 W.L.R. 1019).

"Sale, purchase or exchange of any property" (R.S.C. Ord.86 r.1(1)). A contract for the grant of a lease, even if it is a long lease at a low rent "sold" for a substantial premium, is not an agreement for the "sale" of property within the meaning of this rule (*Young v Markworth Properties* [1965] Ch. 475). Such an agreement means an agreement for sale in consideration of money and not of money's worth (*Doyle v East* [1972] 1 W.L.R. 1080).

"Sale or purchase" (the old R.S.C. Ord.14A) meant prima facie a sale or purchase for money, and therefore could not apply to a contract for the transfer of property for which there had been no monetary consideration (*Robshaw Bros v Mayer* [1957] 1 Ch. 125).

The compulsory acquisition of part of an estate was not a "sale" within the meaning of the terms of a conveyance of another part of the estate (*Marten v Flight Refuelling* [1962] Ch. 115).

Plant was not sold within Income Tax Act 1945 (c.32) s.71(1)—see now Capital Allowances Act 1968 (c.3) s.33—when owners of some shares in a fishing partnership enterprise sold their shares to other owners (*Inland Revenue Commissioners v West* (1950) S.L.T. 337). The compulsory acquisition of a company and its stock by the Transport Commission under the Transport Act 1947 (c.49) was not a "sale of plant and machinery" within this section (*Bramford's Road Transport v Evans* [1953] 1 W.L.R. 1385). Nor were railway wagons owned by a firm of coal merchants "sold" within the meaning of this section when they were compulsorily vested in the British Transport Commission by virtue of s.29 of the Transport Act 1947 (c.49) (*Kirkness v Hudson (John) & Co* [1955] A.C. 696).

A covenant by a lessor not to permit adjoining premises to be used for the sale of tobacco, cigars and cigarettes is not broken by the normal sale of cigarettes at an ABC tearoom (*Lewis (A.) & Co (Westminster) v Bell Property Trust* [1940] Ch. 345).

Power of attorney, as to construction of clause in, empowering sales: see *Hawksley v Outram* [1892] 3 Ch. 359; such a power does not authorise a pledge (*Jonmenjoy Coondoo v Watson*, 9 A.C. 561, cited NEGOTIATE).

"Produced . . . for . . . sale" (Purchase Tax Act 1963 (c.9) Sch.1 Group 25). Articles given free to customers who purchased a specific quantity of petrol had not been "produced for sale" (*Esso Petroleum Co v Customs and Excise Commissioners* [1976] 1 W.L.R. 1).

"Sale, transfer or other disposition" of an interest in a ship: see *Deddington SS Co v Inland Revenue Commissioners* [1911] 1 K.B. 1078, cited DISPOSITION.

"Where goods are sold" (Sale of Goods Act 1979 (c.54) s.21). Where there was an agreement to sell a car, the car did not by virtue only of that agreement become "sold" within the meaning of this section (*Shaw v Commissioner of Police of the Metropolis* [1987] 1 W.L.R. 1332).

SALE

Where a husband and wife, as beneficial owners of the matrimonial home, purported to transfer the property to the wife absolutely this was not a “sale” within the meaning of s.205 of the Law of Property Act 1925 (c.20) (*Monarch Aluminium v Rickman* [1989] 10 C.L. 136).

“Sale . . . of an interest in land” (Law of Property (Miscellaneous Provisions) Act 1989 (c.34) s.2). An option to buy land could be described as a contract for the sale of land conditional upon the exercise of the option (*Spiro v Glencrown Properties* [1991] Ch. 537; *Armstrong and Holmes v Holmes*, *The Times*, June 23, 1993).

“The shares are to be sold” (Companies Act 1948 (c.38) s.174(3A)(b), see now Companies Act 1985 (c.6) s.456). “Sold” here means sold for cash. The power of the court under this section does not extend to ordering the transfer of shares in one company in exchange for those in another (*Re Westminster Property Group* [1985] 1 W.L.R. 676).

“Sale of a cause of action” (Insolvency Act 1986 (c.45) Sch.4 para.6). An agreement to transfer half the proceeds recovered from an action in return for financing that action was a “sale of a cause of action” (*Groewood Holdings v James Capel & Co* [1994] 4 All E.R. 417).

“Sold” (Copyright Act 1956 (c.74) s.21(1)(b)). The question whether a sale had been completed was not to be decided on a consideration of the minds of the parties to see if they shared the same intention but on the objective consideration of what passed between them (*Phillips v Holmes* [1988] R.P.C. 613).

“On the completion of the sale”: where an agency agreement had stipulated a commission of 3 per cent on the purchase price “on the completion of the sale” a part-exchange was capable of being a “sale” provided that the cash element of the transaction was not merely nominal (*Connell Estate Agents v Begej*, *The Times*, March 19, 1993).

The conveyance of a property equally to two sons was not a sale of the property or of any part of it within the meaning of reg.4(l) of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 (SI 1993/355) (*Grampian Valuation Joint Board Assessor v MacDonald* (2001) S.C.L.R. 686, OH).

Stat. Def., Food Safety Act 1990 (c.16) s.2.

“Sale by retail”: Stat. Def., Licensing (Retail Sales) Act 1988 (c.25) s.1.

“Sale of goods by description”: see DESCRIPTION.

“On the Sale”: see ON.

Stat. Def., Sale of Goods Act 1893 (c.71) s.1; Food and Drugs Act 1955 (c.16) s.16(1); Finance Act 1973 (c.51) s.4(1); Sale of Goods Act 1979 (c.54) s.61; Food Act 1984 (c.30) s.16.

Stat. Def., s.103(7) of the Financial Services and Markets Act 2000 (c.8) (“includes any disposal for valuable consideration”).

See BY WEIGHT; FOR SALE; PURCHASE; RETAIL; SAMPLE; SELLER; SELLING; CONVEYANCE; PROCEEDS.

SALE OF PROPERTY. Stat. Def., Corporation Tax Act 2009 ss.928 and 929.

SALE ON TRIAL. “Other instances of sales, dependent on conditions precedent, are afforded by ‘sales on trial’, or ‘approval’, and by the bargain known as ‘sale or return’. In the former class of cases there is no sale till the approval is given, either expressly, or by implication resulting from keeping the goods beyond the time allowed for trial. In the latter case the sale becomes absolute, and the property passes only after a reasonable time has elapsed, without the return of the goods” (Benj. (3rd edn) 590,

591, cited with approval *Elphick v Barnes*, 5 C.P.D. 326). But, semble, sales on "approval" are now put on the same footing as those "on sale or return", by Sale of Goods Act 1893 (c.71) s.18 r.4.

In sales "on trial", the buyer has the whole of the agreed time in which to exercise his option (Benj. (8th edn) 318); and, in the absence of negligence on his part, the loss of the subject-matter before that time falls on the seller (*Elphick v Barnes*, above).

SALE OR RETURN. In the bargain "sale or return", the receiver of the goods solely has the option of returning them; the supplier cannot demand their return, and can only sue for their price or value (per Esher M.R., *Kirkham v Attenborough* [1897] 1 Q.B. 201). The property passes to such receiver and the transaction is conducted when (a) he signifies acceptance to the seller, (b) he retains the goods (without notice of rejection) beyond the fixed time, or (where there is no time fixed) beyond a reasonable time, or (c) he does any "act adopting the transaction" (Sale of Goods Act 1893 (c.71) s.18 r.4); and such lastly mentioned act means some act "inconsistent with anything except his being the purchaser" (per Lopes, L.J., *Kirkham v Attenborough*, above), e.g. as held in that case, pledging the goods. The inconsistent act, moreover, must be done by the receiver himself or by someone on his behalf and with his authority, as distinguished from its being done by a third party to whom the receiver has merely delivered the goods for a special purpose (*Weiner v Gill* [1906] 2 K.B. 574, criticised in *Weiner v Harris* [1910] 1 K.B. 285, cited MERCANTILE AGENT; *Kempster v Bravington*, 41 T.L.R. 414). Cp. HOLD OUT; see also *Genn v Winkel*, 28 T.L.R. 483. See further *Moss v Sweet*, 16 Q.B. 493; *Ray v Barker*, 4 Ex. D. 279; *Ex p. Wingfield*, 10 Ch. D. 591; *Harper v Granville-Smith*, 7 T.L.R. 284; Benj. (8th edn) 315 et seq.

A bargain "on sale for cash only or return" is not one within the statutory terms of "on sale or return" (*Weiner v Gill*, above, distinguishing and doubting *Bryce v Ehrmann*, 42 Sc. L.R. 23).

Where a time is specified in a "sale or return" bargain, it will be reckoned from the receipt of the goods by the buyer (*Jacobs v Harbach*, 2 T.L.R. 419).

(Sale of Goods Act 1893 (c.71) s.18 r.4.) A person does not "retain" goods in his possession on sale for cash or return if, before the time fixed for the return of goods, they are taken in execution (*Re Ferrier Ex p. the Trustee v Donald* [1944] Ch. 295).

"Sale or return" (Sale of Goods Act 1893 (c.71) s.18 r.4) includes situations where the recipient of the goods intends not to buy them himself but to sell them to third parties (*Poole v Smith's Car Sales (Balham)* [1962] 1 W.L.R. 744).

SALEABLE COMMISSION. "Saleable commission" in the army, prior to the Royal Warrant of July 20, 1871, abolishing purchase in the army: see Regulation of the Forces Act 1871 (c.86) s.3. See REGULATION.

SALEABLE UNDERWOOD. What were "saleable underwoods" within 43 Eliz., c.2, was a question of fact (*R. v Narberth North*, 9 A. & E. 815; see further *R. v Mirfield*, 10 East, 224; *R. v Ferrybridge*, 1 B. & C. 379-383, fn.); and in *Fitzhardinge v Pritchett* (L.R. 2 Q.B. 135) it was held that beech trees of 30 years' growth might be cut and managed as "saleable underwood" so as to be rateable under that statute. See PLANTATION.

As to what passes under a grant of "saleable underwoods", see WOOD; Touch. 95. See UNDERWOOD; PROPERTY OTHER THAN LAND.

SALES PITCH. "110. I agree with TNL that the term 'sales pitch' is in the nature of opinion or value judgment. But in itself it is a neutral term; it depends on what is being sold. The term is only defamatory here because of the context in which it is

SALICETUM

used. It is part of the wording that contributes to the second defamatory meaning I have identified. It is artificial to regard it as a separate and distinct defamatory imputation which the ordinary reader would take from the articles.” (*Yeo MP v Times Newspapers Ltd* [2014] EWHC 2853 (QB).)

SALICETUM. “*Salicetum* doth signifie a wood of willowes, *ubi salices crescunt*. These trees in our bookes are called *sawces*” (Co. Litt. 4B).

SALIVA. “By the grant of the boillourie of salt, it is said that the soile shall passe, for it is the whole profit of the soile. And this is called *saliva*, of the French word *salure* for a salt-pit; and you may read *de saliva* in Domesday, and *selda* signifieth the same thing; and where you shall reade in records *de lacertâ in profunditate aquæ salsæ*, there *lacertâ* signifieth a fathom” (Co. Litt. 4B). But a little further on it is said, “*Selda* is a wood of sallows, willows, or withies”; see also SELDA; Touch. 95. Cowel gives the word as “salina”, and, under *selda*, thought Coke mistaken in taking “selda” for a salt pit.

SALMON. Stat. Def., Salmon and Freshwater Fisheries Act 1975 (c.51) s.41; Import of Live Fish (England and Wales) Act 1980 (c.27) s.4; Fisheries Act 1981 (c.29) s.44; Salmon Act 1986 (c.62) s.40.

See FRY; FISHERY; FISHING; SEA FISH.

SALT. In the memorandum of a policy of insurance, “salt” does not include saltpetre (1 Park, 245).

To “salt” an invoice means the addition of a commission to the price at which goods have been purchased (*Ex p. Johnson*, 30 L.J. Bank. 38).

SALTATORIA. See DEER LEAP.

SALVAGE. “The taking care of goods left by the tide upon the banks of a navigable river, communicating with the sea, may in a vulgar sense be said to be salvage; but it has none of the qualities of salvage, in respect of which the laws of all civilised nations, the laws of oleron and our own laws in particular, have provided that a recompense is due for the saving, and our law has also provided that this recompense should be in lien upon the goods which have been saved” (per Eyre C.J., *Nicholson v Chapman*, 2 Bl. H. 257), i.e. “the service must be successful” (*The Edward Hawkins*, 31 L.J.P.M. & A. 46).

“Salvage, in its simple character, is the service which those who recover property from loss or danger at sea, render to the owners, with the responsibility of making restitution, and with a lien for their reward. It is personal, in its primary character at least” (per Lord Stowell, *The Thetis*, 3 Hagg. Adm. 48; see further *Aitchison v Lohre*, 4 App. Cas. 755).

“Life salvage”: see ss.544, 545 of the Merchant Shipping Act 1894 (c.60); BELONGING; *The Pacific* [1898] P. 170, cited PART.

By the original law of the Admiralty Court, salvage is claimable only for a SHIP, her apparel and cargo (including flotsam, jetsam and lagan), and the wreck of these, and freight; by statute, life salvage is added (*The Gas Float Whitton No.2* [1896] P. 42, affirmed in HL [1897] A.C. 337).

Pt 9 of the Merchant Shipping Act 1894 (c.60) s.510: “‘Salvage’ includes all expenses properly incurred by the salvor in the performance of the salvage services”.

“Salvage due under this Act” (s.552 of the Merchant Shipping Act 1894 (c.60)) refers to all cases in which salvage may become payable by the decree of any court having jurisdiction under the Act to determine salvage disputes (*The Fulham* [1899] P. 251).

“Reasonable amount of salvage” (ss.458, 460 of the Merchant Shipping Act 1854 (c.104)—see now ss.546, 547 of the Merchant Shipping Act 1894 (c.60)): see *Beardnell v Beeson*, 9 B. & S. 315.

Principles governing the amount of salvage: see *The William Beckford*, 3 Rob. C. 355; *The Glengyle* [1898] P. 97; [1898] A.C. 519. See further *The Baku Standard* [1901] A.C. 549; *The Germania* [1904] P. 131; *The Port Hunter* [1910] P. 343; *The San Onofre* [1917] P. 96.

An agreement to equitably apportion salvage is not an agreement to “abandon” salvage, within Merchant Shipping Act 1854 (c.104) s.182—see now Merchant Shipping Act 1894 (c.60) s.156 (*The Wilhelm Tell* [1892] P. 337).

Salvage “for owners’ and charterers’ equal benefit”, “means the net pecuniary result of salvage operations” (per Bigham J., *Booker v Pocklington SS Co* [1899] 2 Q.B. 694). See further *Cargo ex Port Victor* [1901] P. 243; *The Minneapolis* [1902] P. 30; *The Auguste Legembre* [1902] P. 123; *The August Korff* [1903] P. 166; *The Elswick Park*, 72 L.J.P.D. & A. 79; *Crouan v Stanier* [1904] 1 K.B. 87, distinguishing *The Pickwick*, 16 Jur. 669; *The Duc D’Aumale* [1904] P. 60; *The Friesland* [1904] P. 345; *The Maréchal Suchet*, 80 L.J.P. 51.

“Salvage charges” may, no doubt, in some connections mean claims for volunteer salvage services. But it is quite common to use the words for the purpose of describing those expenses which come within the scope of suing and labouring expenditure” (per Bigham J., *Western Assurance v Poole* [1903] 1 K.B. 383, cited TOTAL LOSS).

Salvage allowances and lien to mortgagees, trustees, etc. in regards to outlay in preserving the subject-matter of the mortgage, trust, etc.: see *Securities & Properties Corp v Brighton Alhambra*, 62 L.J. Ch. 566; *Re Montagu* [1897] 2 Ch. 8, cited REBUILDING; *Re Waldegave* [1899] W.N. 240.

But the general principle is that the doctrine of maritime salvage “has no application to goods on land, nor to anything except ships or goods in peril at sea. With regard to ordinary goods on which labour or money is expended with a view of saving them or benefiting the owner, there can be only one principle upon which any claim for repayment can be based—and that is, if you can find facts from which the law will imply a contract to repay or to create a lien” (per Bowen L.J., *Falcke v Scottish Insurance*, 34 Ch. D. 249). Salvage on land is not a recognised head of claim in the common law (*Sorrell v Paget* [1950] 1 K.B. 252). See further *Re Winchilsea*, 39 Ch. D. 168.

As to the rule as to salvors rendering services at request, see *The Tarbert* [1921] P. 372.

“Salvage for services rendered to a ship” (Supreme Court of Judicature (Consolidation) Act 1925 (c.49) s.22(1)(v)). The jurisdiction of the Admiralty Court under this section does not extend to the rendering of services to vessels in peril in non-tidal inland waters (*The Goring* [1987] 2 W.L.R. 1151).

“Salvage charges”: Stat. Def., Marine Insurance Act 1906 (c.41) s.65.

Stat. Def., Pensions (Mercantile Marine) Act 1942 (5 & 6 Geo. 6, c.26) s.10; Road Traffic Regulation Act 1967 (c.76) s.104.

See SUE AND LABOUR; EXTORTION; DURESS; SALVOR; TOWAGE; WITHOUT BENEFIT OF SALVAGE; CLAIM.

SALVOR. (Merchant Shipping Act 1894 (c.60) s.742). “‘Salvor’ means (in the case of salvage services rendered by the officers or crew, or part of the crew, of any ship belonging to Her Majesty) the person in command of that ship”.

A pilot on board a salving ship may be a salvor entitled to share in salvage remuneration if he runs risk outside his ordinary duties (*The Santiago* 70 L.J.P.D. & A. 12).

SAME. "Same business", covenant against: see *Ashby v Wilson* [1900] 1 Ch. 66, cited COFFEE-HOUSE. To carry on "the same business" does not mean that it must be done in a shop; it means selling similar goods (*Brampton v Beddoes* 11 W.R. 268).

"Same cause of complaint" within the judgment of Evans, P., in *Stokes v Stokes* [1911] P. 195, 199, does not mean where there has been a decision on facts alleging desertion by one spouse, that the evidence then before the court is entirely shut out from being heard at subsequent proceedings (*Molesworth v Molesworth* [1947] 2 All E.R. 842). See CAUSE.

"Same or similar character" (Criminal Law Act 1977 (c.45) s.23(7)(a)). Where a person charged with two offences, one of which is an offence *prima facie* triable summarily, elects on the other to be tried by a jury, it is not necessary for the offences to be charged under the same section of the same Act in order for the offences "to constitute or form part of a series of two or more offences of the same or similar character" within the meaning of this section, and so to be tried together. But there must be a nexus between the offences, which must be similar in fact and in law. For s.23(7)(a) to apply the other offences must (1) bear a similarity of both fact and law; (2) be triable summarily or on indictment; and (3) form part of a series of offences separated in time (*Re Prescott (Note)* (1979) 70 Cr.App.R. 244; *R. v Hatfield Justices, Ex p. Castle* [1981] 1 W.L.R. 217; *R. v Leicester Justices, Ex p. Lord* [1980] Crim. L.R. 581).

The "expression 'under the same circumstances' must now be taken to mean, under like circumstances as regards the services performed by the railway company in receiving, carrying, and delivering, the goods—see *Great Western Railway v Sutton* L.R. 4 H.L. 226; *London & North Western Railway v Evershed* 3 Q.B.D. 134, 254" (per Lindley L.J., *Manchester, Sheffield & Lincolnshire Railway v Denaby Main Co*, above). See further *Hull etc. Railway v Yorkshire etc. Coal Co*, 56 L.J.Q.B. 261; see also *Taylor v Metropolitan Railway* [1906] 2 K.B. 55.

"Same class" (Finance Act 1965 (c.25) Sch.6 para.27(3)). Where, on a reorganisation, shares transferrable at will are acquired in place of shares which had been subject to restrictions on the right of transfer, these shares were not of the "same class" within the meaning of this paragraph (*IRC v Beveridge* [1979] T.R. 305).

"Same description" of goods: see *Great Western Railway v Sutton*, L.R. 4 H.L. 226, above, para.(8).

Where a rule, made under an Act, is to have "the same effect" as if contained in the Act, then, if validly made, it is for all purposes to be treated exactly as if it were in the Act itself (*Patent Agents Institute v Lockwood* [1894] A.C. 347, especially per Herschell C.). Cp. "like effect", under LIKE.

"Same ground", in a commercial traveller's contract of service: see *Mumford v Gething*, 29 L.J.C.P. 105.

"Same household" (Domestic Violence and Matrimonial Proceedings Act 1976 (c.50) s.1(2)). A man and woman living as man and wife in a two-roomed council flat, but, due to a deteriorating relationship, occupying separate rooms and leading separate lives, were held to be occupying the "same household" for the purposes of this Act (*Adeoso v Adeoso* [1980] 1 W.L.R.).

“Same interest”: “Numerous persons having the same interest” (R.S.C. Ord.16 r.9, now Ord.15 r.12) includes only those who have a common interest in some property or proprietary right; the phrase includes persons who may be assumed to be interested in a tort (*Taff Vale Railway v Amalgamated Society etc.* [1901] A.C. 426); so that members of an unincorporated club may be sued in tort in a representative capacity (*Campbell v Thompson* [1953] 1 Q.B. 445). Growers of fruit, flowers, etc. who use Covent Garden Market had the “same interest” in the cart stands in the market; for under the Regulation of Covent Garden Market Act 1828 (9 Geo. 4, c. cxiii), they had preferential rights to resort to such stands (*Ellis v Bedford* [1899] 1 Ch. 494, affirmed in HL [1901] A.C. 1). See further *Wood v McCarthy* [1893] 1 Q.B. 775; *Markt v Knight SS Co* [1910] 2 K.B. 1021; *Hardie and Lane v Chiltern* [1928] 1 K.B. 663. Four council tenants opposing a proposed means-tested rent increase scheme did not have the “same interest” since, if the scheme were carried out the more affluent tenants would subsidise the less affluent and there could therefore be a conflict of interest (*Smith v Cardiff Corp* [1954] 1 Q.B. 210).

“Same kind” (Weights and Measures Act 1963 (c.31) s.26(7)). See *Ellis v Price* (1968) 66 L.G.R. 404 for a discussion as to whether split tin and sandwich loaves are “articles of the same kind” within this section.

“Same manner”, “same time and manner”, “same terms and conditions”: see AFORESAID; COURT; FEME. Cp. MANNER.

“Same occasion” (Transport Act 1981 (c.56) s.19(1)). The two offences of failure to stop after an accident and failure to report that accident to the police were committed on the “same occasion” for the purposes of this section (*Johnson v Finbow* [1983] 1 W.L.R. 879).

“Same offence” (Habeas Corpus Act 1679 (c.2) s.6): see *Att-Gen Hong Kong v Kwok-a-Sing* L.R. 5 P.C. 179.

Where two defendants were charged with offences which were similar in nature, subject-matter and circumstances, and immediately successive one to the other, those offences might have been the “same offences” for the purposes of s.1(f)(iii) of the Criminal Evidence Act 1898 (c.36) (*R. v Russell (George)* [1971] 1 Q.B. 151). For offences to be regarded as “the same offence” for the purposes of this section they must be the same in all material respects, including the time at which they were committed (*R. v Hills* [1978] 3 W.L.R. 423). Co-accuseds are only “charged with the same offence” if they are alleged to have been pursuing the same enterprise, not where the essence of the case is that each has committed an offence against the other (*R. v Rockman* (1978) 67 Cr.App.R. 171). Two defendants charged on the same indictment with assaulting each other are not “charged with the same offence” for the purposes of this section (*R. v Lauchlan (Note)* [1978] R.T.R. 326).

Offices in the W1 and EC3 areas of London were in the “same place” for the purposes of s.49(12)(a) of the Bills of Exchange Act 1882 (c.61) (*Hamilton Finance Co v Coverley etc. Finance Co* [1969] 1 Lloyd’s Rep. 53).

“The expression ‘passing only over the same portion of the line’ (s.90, Railways Clauses Consolidation Act 1845 (c.20)) appears to us to mean passing between the same points of departure and arrival, and passing over no other part of the line. This is the natural interpretation of the words; it was adopted by Cranworth C., in *Finnie v Glasgow Railway* (2 Macq. 77), and by the Court of Session in the recent case of *Murray v Glasgow & South-Western Railway* (11 Sess. Ca. 205); and there is no decision in which any other interpretation has been put on the expression” (per

Lindley L.J., delivering judgment of CA, *Manchester, Sheffield & Lincolnshire Railway v Denaby Main Co*, 14 Q.B.D. 209, affirmed by HL, 11 App. Cas. 97).

"Same position": cp. "like position" *London CC v Att-Gen* [1902] A.C. 165, cited POSITION.

"Same power" of removing old, as of granting new, licences (Licensing Act 1910 (c.24) s.26): see *R. v Drinkwater* [1905] 2 K.B. 409, cited REMOVAL; *R. v Southampton* [1929] 1 K.B. 263.

"Same premium and conditions": see WARRANTED HIGHEST RATE. Cp. SUBJECT TO.

"Same qualification": see QUALIFICATION.

"Same state" (Food and Drugs Act 1955 (c.16) s.115). Pasteurised milk is not in the "same state", within the meaning of this section, as it was in before pasteurisation (*Hall v Owen-Jones* [1967] 1 W.L.R. 1362). A bulk quantity of meat which is cut up into smaller portions for sale, is no longer "in the same state" for the purposes of this section (*Tesco Stores v Roberts* [1974] 1 W.L.R. 1253). Packs of puff pastry purchased by the shopkeeper and immediately placed in a deep freeze were held to have been sold in the "same state" as when purchased in circumstances where eleven days later a customer bought two packs from a shelf where they had been placed to thaw (*Walker v Baxter's Butchers* (1978) 76 L.G.R. 183).

"Same terms": see *Metropolitan Electric Supply Co v Ginder* [1901] 2 Ch. 799, cited UNDUE PREFERENCE.

A clause in a tenancy agreement giving the tenant the option "of continuing the tenancy for a further period of six months on the same terms and conditions, including this clause" was held to give the tenant an option to continue for one further period of six months and no more (*Green v Palmer* [1944] Ch. 328).

"One and the same time, and from one and the same source": see ONE TIME.

"Same transaction" (R.S.C. Ord.16 r.1, now Ord.15 r.4): see *Stroud v Lawson* [1898] 2 Q.B. 44; *Oxford and Cambridge Universities v Gill* [1899] 1 Ch. 55; *Drincqbier v Wood* [1899] 1 Ch. 393; *Ellis v Bedford* [1901] A.C. 1.

"Same trusts": for the meaning of these words in a will, see *Garratt v Garratt*, 91 L.J.P. 207.

"Upon the same trusts and purposes": see *Re North*, 76 L.T. 186, discussing *Re Perkins*, 67 L.T. 743. Cp. *Re Walpole* [1903] 1 Ch. 928, cited ALL.

"Same VOYAGE": see *Gether v Capper* 24 L.J.C.P. 69; 25 L.J.C.P. 260.

"Committed on the same occasion" (Transport Act 1981 (c.56) s.19(1)). Where the accused kept two uninsured vehicles which he parked on the road outside his house, one being used to provide parts for the other, the two offences of using uninsured vehicles were held to have been "committed on the same occasion" within the meaning of this section (*Johnston v Over* [1985] R.T.R. 240).

"The locality . . . was in the same state" (General Rate Act 1967 (c.9) s.20(1)(b)). "State" should be given a wide construction so as to include intangible as well as physical advantages and disadvantages. Thus, the locality in part of which an enterprise zone had been designated, was not "in the same state" as before the designation (*Clement v Addis* [1988] 1 W.L.R. 301).

(Civil Liability (Contribution) Act 1978 (c.47) s.1(1)). "The same damage" referred to the damage suffered by the person to whom the party seeking contribution was liable, so that the physical defects in a reservoir suffered by a water authority and the damage suffered by the building and civil engineering contractor who suffered the financial loss of having to construct a second reservoir for the water authority were not

“the same damage” within the meaning of s.1(1) of the 1978 Act (*Birse Construction Ltd v Haiste Ltd Watson (Third Parties)* [1996] 1 W.L.R. 675).

The provision of s.13(1) of the Housing Act 1980 (c.51) (replaced by s.136(1) of the Housing Act 1985 (c.68)) that where a new tenant inherits from a secure tenant the new tenant shall be “in the same position” as was the secure tenant, means that where the secure tenant had arranged a price for purchasing his council house, including a discount for length of residence, the new tenant inherits not only the right to buy but also the right to the discount (*McIntyre v Merthyr Tydfil BC* (1989) 21 H.L.R. 320).

See LIKE; SAME DAMAGE; SIMILAR; SUBSTANTIALLY TO THE LIKE EFFECT.

SAME ACTS. For the purpose of the double-jeopardy prohibition in the Schengen acquis protocol, “same acts” needs to be determined by reference to the identity of the material acts, taken as a set of inextricably linked facts and irrespective of their legal classification (*Kretzinger v Hauptzollamt Augsburg* (Case C-288/05) [2007] 3 C.M.L.R. 43, ECJ).

SAME DAMAGE. The Civil Liability (Contribution) Act 1978 makes provision by reference to whether A is liable to B for the same damage as C is liable to B. The Court of Appeal held that A may be liable for the same damage as C despite the fact that the amount recoverable by way of damages might vary according to the cause of action enforced by B. (*Eastgate Group Ltd v Lindsey Morden Group Inc (Smith & Williamson (a firm), Part 20 defendant)* [2002] 1 W.L.R. 642, CA). The House of Lords held that the words “the same damage” bear their natural and ordinary meaning and are to be applied without gloss to the proper evaluation and comparison of claims alleged to qualify for contribution. Shared liability remains the essence of the principle of contribution (*Royal Brompton Hospital NHS Trust v Hammond* [2002] 1 W.L.R. 1397, HL; [2002] 2 All E.R. 801, HL).

SAME INTEREST. For the meaning of “same interest” in the context of CPR r.19.6(1), see *Emerald Supplies Ltd v British Airways Plc* [2009] EWHC 741 (Ch).

SAME PARTIES. In determining whether parties are “the same parties” for the purposes of Council Regulation (EC) 44/2001 on jurisdiction and recognition of judgments, the court must look at substance and not form, and although the parties must be identical they can be so despite being different legal entities (*Kolden Holdings Ltd v Rodette Commerce Ltd* [2008] EWCA Civ 1468).

SAME SERVICE. For the purposes of equal pay legislation as construed by the European Court of Justice in *Defrenne v Sabena (No.2)* [1974] 1 C.M.L.R. 494, the existence of a service should be assessed on the facts of a case in a loose and non-technical sense. It is reasonable to refer to two persons being engaged in the same service if they are in the same branch of public service and are subject to a uniform system of national pay and conditions set by a statutory body (*South Ayrshire Council v Morton* [2002] 2 C.M.L.R. 8 (p.125) SCS).

SAME SEX. See SEX.

SAMPLE. It is implied that the bulk will correspond with the sample (Sale of Goods Act 1979 (c.54) s.15(2), as amended by Sale and Supply of Goods Act 1994 (c.35) Sch.2 para.5). See also *Godley v Perry* [1960] 1 W.L.R. 9.

“Sample” (Food and Drugs Act 1955 (c.16) s.93(1)). Can six meat pies constitute a “sample”? (*Skeate v Moore* [1972] 1 W.L.R. 110). A substance is a “sample” for the purposes of s.93(1) if picked out indiscriminately from among similar substances with the object of making a random test. The quantity does not determine the issue (*Grimsby BC v Louis C. Edwards & Sons (Manufacturing)* [1976] Crim. L.R. 512).

SANCTION

“Sample” (Food and Drugs Act 1955 (c.16) s.91). Defective food, e.g. a piece of cheese containing a piece of metal, handed in by a purchaser who had bought it for home consumption, was not a “sample” within the meaning of this section (*Arun DC v Argyle Stores* [1986] Crim.L.R. 685).

“Bodily sample”: Stat. Def., Child Support Act 1995 (c.34) s.21(4).

“Intimate sample” and “non-intimate sample”: Stat. Def., Criminal Justice and Public Order Act 1994 (c.33) s.58(2) and (3) (amending s.65 of Police and Criminal Evidence Act 1984 (c.60)).

SANCTION. “Sanction” not only means prior approval; generally, it also means ratification (*Re De La Warr*, 16 Ch. D. 587); this case was on s.17 of the Settled Estates Act 1877 (c.18). (See Settled Land Act 1925 (c.18) s.92, where the word is APPROVE.) See RATIFY. Cp. AUTHORISE. See also *Re Unite*, 75 L.J. Ch. 163, cited SATISFACTION.

“But when the court is to be asked to approve proceedings under the Settled Land Act 1882 (c.38), it is not wise to defer the application till after the proceedings have been taken” (per Bowen L.J., in *Re Beddoes* [1893] 1 Ch. 562; *Re Yorke* [1911] 1 Ch. 370). See s.92 of 1925 Act (c.18).

But the regulation, Bankruptcy Rules 1886 r.317, that no member of a committee of inspection should derive profit from any transaction in the bankruptcy “except under and with the sanction of the court”, meant that the sanction had to be obtained before the transaction was commenced (*Re Gallard* [1896] 1 Q.B. 68; cp. now Bankruptcy Rules 1952 (SI 1952/2113) r.350). Cp. CONSENT; PERMISSION. So, the “sanction” of the court or committee of inspection, under s.12(1)(4) of the Companies Winding-up Act 1890 (c.63)—see Companies Act 1948 (c.38) s.245—had, as a rule, to be obtained beforehand (*Re London Metallurgical Co* [1897] 2 Ch. 262).

“Sanction” by liquidator, of a transfer of shares (Companies Act 1862 (c.89) s.131) “means approval; and implies a power of disapproval” (per Lindley L.J., *Re National Bank of Wales*, 66 L.J. Ch. 225, cited SHARE). See now Companies Act 1948 (c.38) s.282.

Sanction of water supply by Local Government Board: see *Soothill v Wakefield* [1905] 2 Ch. 516.

SANCTIONS. “Sanctions . . . shall be available” (Health and Medicines Act 1988 (c.49) s.17(1)(c)). The use of the word “sanctions” shows that it is intended that there should be a pend element in addition to what is required to compensate the National Health Service for Loss suffered as a result of the medical practitioner’s defamation (*R. v Secretary of State for the Department of Health, Ex p. Hickey*, *The Times*, June 25, 1992).

SANCTUARY. Sanctuary was “a privileged place by the prince for the safeguard of mens lives which are offenders, being founded upon the law of mercie, and upon the great reverence, honour, and devotion which the prince beareth to the place whereunto hee granteth such a priviledge” (Termes de la Ley; see further Cowel; Jacob; 4 Bl. Com. 332, 365, 436). But “no sanctuary, or privilege of sanctuary, shall be hereafter admitted or allowed in any case” (s.7 (21 Jac. 1, c.28)), an Act repealed by Statute Law Revision Act 1863 (c.125), without reviving this privilege (see s.1).

SANDWICH COURSE. Stat. Def., Education (Student Loans) Regulations 1998 (SI 1998/211) reg.3(1).

SANITARY CONVENIENCE. Stat. Def., “a closet, privy or urinal” (Food Act 1984 (c.30) s.132(1)).

SANS RECOURS. An indorsement of a bill of exchange or promissory note (see endorse), with the added words “sans recours”, or “without recourse to me”, exonerates the indorser from responsibility (Byles (16th edn), 181); so, in the United States, of “at the indorsee’s own risk” (*Rice v Stearns*, 3 Mass. 225; *Mott v Hicks*, 1 Cowen, 512; Byles (6th American edn), 242). But it transfers the indorser’s own interest in the document (per Patteson J., *Morris v Walker*, 15 Q.B. 598).

An indorsement of a bill of lading directing the shipowner to deliver to the indorsee, “looking to him for all freight, without recourse to us”, exonerates the indorser from liability to freight, if it be proved that the shipowner accepted the indorsement; but such proof is not furnished by merely proving that the indorsement was on the bill when that document was handed to the master; it must be proved that he saw and accepted the indorsement (*Lewis v McKee* (1866–67) L.R. 2 Ex. 37).

SATELLITE TELEVISION SERVICE. Stat. Def., Communications Act 2003 (c.21) s.273(7).

SATISFACTION. “Nota, ‘in satisfaction’ and ‘in full satisfaction’ is all one” (Co. Litt. 213A). See further ACCORD; GREE; FOR.

A deed acknowledging a payment “in full satisfaction” (or, semble, “in satisfaction”) of rights, may amount to a release, and if those rights relate to property, it may amount to a “conveyance on sale” (*Garnett v Inland Revenue Commissioners* 81 L.T. 633, cited RELEASE).

“In satisfaction of his claim”: “there is no ambiguity about these words; they are equivalent to ‘in extinction’, ‘in discharge’, ‘in payment’, as the case may be” (per Lord Adam *Purnell v Shannon* 32 Sc. L.R. 47). See FULL DISCHARGE.

“In lieu and full satisfaction of all claims”: see *Re Proctor*, 42 Sc. L.R. 566, cited ALL.

“Satisfaction” to be made for taking the surface of land, e.g. for a canal, includes an obligation to make compensation for the subjacent minerals which must be left for support (*London & North Western Railway v Evans* [1893] 1 Ch. 16); on which see *Clippens Oil Co v Edinburgh Water Trustees* [1904] A.C. 64. See SOIL.

“Satisfaction for all damage” (s.16 of the Railways Clauses Consolidation Act 1845 (c.20)); see *Re Gower’s Walk Schools v London Tilbury & Southend Railway* 24 Q.B.D. 326, on which case see *Horton v Colwyn Bay* [1908] 1 K.B. 327, cited INJURIOUSLY AFFECTED. “Compensation for any damage”: see *Colac v Summerfield* [1893] A.C. 187. See further *St. James Electric Light Co v The King*, 73 L.J.K.B. 518; COMPULSORY POWERS.

“Making or tendering satisfaction” for damage done in the exercise of statutory powers, does not imply a condition precedent to the right of entry; but means that the act shall not be done without compensation being made (*Lister v Lobley or Hoxley*, 6 L.J.K.B. 200; *Bentley v Manchester, Sheffield & Lincolnshire Railway* [1893] 3 Ch. 222).

“Indemnity or satisfaction”, for injury to a person (art.1056 of the Civil Code of Quebec): see *Miller v Grand Trunk Railway* [1906] A.C. 187, over-ruling *R. v Grenier*, 30 Can. S.C.R. 42.

To “make satisfaction” to a creditor (Judgments Act 1838 (c.110) s.36) was to pay his debt (*Hitching or Kitching v Croft*, 10 L.J.Q.B. 18); in scarcely any connection could the term also connote that the debtor was to obtain the goodwill and pleasure of his creditor (*Eagleton v East India Co*, 3 B. & P. 55).

SATISFACTORILY

“When a testator gives a direction that a particular thing shall be taken by any one ‘in or towards satisfaction’ of his share, and the thing spoken of exists and belongs to the testator, I cannot doubt that, according to the plain and obvious meaning, he gives that thing; and this plain meaning is not controlled or varied, but rather corroborated, by adding such words as ‘and shall be brought into hotchpot and accounted for accordingly’” (per Rigby L.J., *Re Cosier* [1897] 1 Ch. 325; but see same case in HL nom. *Wheeler v Humphreys* [1898] A.C. 506).

As to the doctrine of satisfaction of legacies, see ADEMPITION; White & Tudor, Theobald; *Re Rattenbury* [1906] 1 Ch. 667, and cases there cited; PORTION. See also DONATIO MORTIS CAUSA.

As to satisfaction of a covenant in a marriage settlement to pay a sum of money to the trustees, see *Re Cartwright* [1903] 2 Ch. 306; *Re Blundell* [1906] 2 Ch. 222; *Re Vernon* 95 L.T. 48.

When a street had been in the possession of a local authority for a considerable time and they had done nothing, it had to be assumed that it was sewered to their “satisfaction” (Public Health Act 1875 (c.55) s.150), “although, as a matter of fact, they have not come to such a determination at all” (per Kekewich J., *Handsworth v Derrington* [1897] 2 Ch. 438, cited SEWERED, stating effect of judgment of Esher M.R., *Bonella v Twickenham*, 20 Q.B.D. 63; see further *Rishton v Haslingden* [1898] 1 Q.B. 294; cited STREET, and consider *Simmonds v Fulham* [1900] 2 Q.B. 188, wherein *Bonella v Twickenham* was distinguished). See also *St. Giles, Camberwell v Hunt*, 56 L.J.M.C. 65; *Wandsworth v Golds*, 80 L.J.K.B. 126, cited PAVE; *Bristol Corporation v Sinnott* [1918] 1 Ch. 62. In *Handsworth v Derrington* the sewerage was held not to have been done to such “satisfaction”. See further FRONTING. See also *Wilmslow v Sidebottom*, 70 J.P. 537; *Harrison v New Street Mews* [1906] 1 K.B. 703, cited FRONTING; *Sunderland Corporation v Gray* [1928] Ch. 756.

Where a thing is to be done “to the satisfaction” of A, that does not mean that his prior sanction must be obtained, and if he honestly considers that what has been done meets his approval, then it is to his “satisfaction” (*Re Unite*, 75 L.J. Ch. 163, cited DIRECTION).

A thing to be done if it appear “to the satisfaction of” the judge that it ought to be done, does not exempt his ruling from being reviewed (*Beaufort v Crawshay*, L.R. 1 C.P. 699, cited PERMANENT).

“By way of satisfaction”, in Gasworks Clauses Act 1847 (c.15) s.20: see *Birmingham Corp v Allsopp & Sons Ltd*, 88 L.J.K.B. 549. Cp. now Gas Act 1948 (c.67) Sch.3 para.29.

See SATISFACTORY; SACRIFICE.

SATISFACTORYLY. Where a certificate is to show that “work has been satisfactorily carried out” it does not have to show that the amount, or value of the material and labour used is satisfactory (*Compania Panamena Europea Navegacion v Frederick Leyland & Co* [1947] A.C. 428).

SATISFACTORYLY SOLD. See CAUTION.

SATISFACTORY. Where one party has to perform a contractual obligation to the “satisfaction” of the other, e.g. furnish “proof satisfactory” of death or accident, this does not give the other the power to act capriciously—he can only ask for a reasonable fulfilment of the obligation (*Braunstein v Accidental Insurance*, 31 L.J.Q.B. 17; but see, as regards a works contract, *Stadhard v Lee*, 32 L.J.Q.B. 75). So, a condition to furnish a title “satisfactory” to the purchasers, only entitles him to make usual

objections (*Lord v Stephens*, (1835) 1 Y. & C. Ex. 222). So, services or conduct to the “satisfaction” of an employer means, such as ought reasonably to satisfy him, of which the jury are to judge (per Esher M.R., *Petty v Ophir Concessions*, *The Times*, December 17, 1890).

“Satisfactory evidence” (Tithe Act 1836 (c.71) s.64), though under this section a sealed copy of a tithe commutation map was “satisfactory evidence” of its accuracy, that was only so for the purposes of the Act, and not on questions of ownership (*Wilberforce v Hearfield*, 5 Ch. D. 709). See SUFFICIENT EVIDENCE.

“Satisfactory ground” (s.1(3) of the Increase of Rent and Mortgage Interest (War Restrictions) Act 1915 (c.97)), which authorised the court to make an order for possession “on some other ground which may be satisfactory to the court”: see *Harcourt v Lowe*, 35 T.L.R. 255; *Artizans’ Dwellings Co v Whittaker* [1919] 2 K.B. 301; *Price v Pritchard*, 35 T.L.R. 672; *Green-Price v Webb*, 89 L.J.K.B. 216; *Hunt v Bliss*, 89 L.J.K.B. 174.

“Satisfactory proof”, as regards a life policy: see *Moore v Woolsey*, 24 L.J.Q.B. 40. See further PROVE.

“Satisfactory reasons” for not manufacturing a patented article in the United Kingdom, under s.27(2) of the Patents and Designs Act 1907 (c.29): see *Re Hatsch’s Patents* [1909] 2 Ch. 68, cited PATENT.

“Satisfactory undertaking” (Divorce Reform Act 1969 (c.55) s.6(3)(b)). An undertaking by a petitioner to make “such financial provision” for the wife “as the court may approve” was not a “satisfactory undertaking” within the meaning of this section, because it failed to give any specific proposals even in outline (*Grigson v Grigson* [1974] 1 W.L.R. 228).

As to an architect’s certificate of satisfactoriness: see CERTIFICATE.

SATISFIED. “30. The Secretary of State places great weight on the word ‘satisfied’ within the terms of the prohibition in s.40(4) of the Act against making an order for deprivation ‘if [she] is satisfied that the order would make a person stateless’. In providing for her satisfaction in this regard, the subsection replicates the requirement in subss. (2) and (3) that she be ‘satisfied’ of the existence of one or other of the two grounds for making the order. The word ‘satisfied’ in the subsections should, if possible, be given some value. I confess, however, that I do not find it easy to identify what that value should be. Parliament has provided a right of appeal against her conclusion that one or other of the grounds exist and/or against her refusal to conclude that the order would make the person stateless; and it has been held and is common ground that such is an appeal in which it is for the appellate body to determine for itself whether the ground exists and/or whether the order would make the person stateless (albeit that in those respects it may choose to give some weight to the views of the Secretary of State) and not simply to determine whether she had reason to be satisfied of those matters (*B2 v Secretary of State for the Home Department* [2013] EWCA Civ 616, Jackson LJ, para 96). Mr Hermer suggests that the word ‘satisfied’ means only that the Secretary of State must bring her judgement to bear on the matters raised by the subsections. His suggestion may afford some slight significance to the word in subss. (2) and (3). But does it work in relation to subs. (4)? If an order would make a person stateless but the Secretary of State has failed even to bring her judgement to bear on the possibility of that consequence, the order can hardly escape invalidity on the basis that the Secretary of State was never satisfied that the order would have that effect. Irrespective, however, of whether the word ‘satisfied’ in subs.

SATISFY

(4) can sensibly be afforded any significance at all, I am clear that it cannot bear the weight which Mr Swift seeks to ascribe to it. He contends that it confers latitude upon the Secretary of State—and, in the event of an appeal, upon the Tribunal or the Commission—to look beyond the ostensible effect of the order to the active cause of any statelessness and, in particular, to the facility of the person to secure restoration of his previous nationality. But a requirement that I should be satisfied of a fact does not enlarge or otherwise alter the nature of the fact of which I should be satisfied. Whether the requirement is that the fact should exist or that I should be satisfied of it, the nature of the fact remains the same; it is only the treatment of the fact in my mind which, subject to the context, is governed by the word ‘satisfied’.” (*Secretary of State for the Home Department v Al-Jedda* [2013] UKSC 62.)

SATISFY; SATISFIED. (Town and Country Planning Act 1944 (c.47) s.1.) The court could not examine the Minister’s decision that he “is satisfied” that an order was requisite for dealing satisfactorily with extensive war damage on the ground that the phrase meant “satisfied on reasonable grounds” (*Robinson v Minister of Town and Country Planning* [1947] K.B. 702). See also REASONABLE; REASONABLE CAUSE; REASONABLE GROUND.

“Is satisfied” (Matrimonial Causes Act 1950 (c.25) s.4) meant satisfied beyond reasonable doubt (*Preston-Jones v Preston-Jones* [1951] A.C. 391; *Galler v Galler* [1954] P. 252). The words did not import a criminal standard of proof. They merely meant “makes up its mind” (*Blyth v Blyth* [1966] A.C. 643).

“Satisfied” (Judgments Act 1838 (c.110) s.17). Where money paid into court was ordered to be paid out to the plaintiff in satisfaction of the judgment debt the debt was not thereby “satisfied” within the meaning of this section. This did not occur until the money was actually paid (*Parsons v Mather & Platt* [1977] 1 W.L.R. 855).

“Satisfy themselves” (Television Act 1964 (c.21) s.3(1)). For a consideration of whether or not the Independent Broadcasting Authority had done enough to “satisfy themselves” for the purposes of this section, see *Att-Gen ex rel. McWhirter v IBA* [1973] 1 Q.B. 629.

“If a magistrates’ court is satisfied” (Magistrates’ Courts Act 1980 (c.43) s.129(1)). Justices could only be “satisfied” that a person who had been remanded was unable by reason of illness or accident to appear or be brought before the court at the expiration of the period for which he had been remanded if they had solid grounds on which they could reasonably found a reliable opinion (*R. v Liverpool City Justices, Ex p. Grogan* [1991] C.O.D. 148).

Compliance with the European Convention on Human Rights requires the concept that the court be satisfied of the existence of exceptional circumstances in s.25(1) of the Criminal Justice and Public Order Act 1994 (c.33) to be read down to impose only an evidential burden on the defendant (*R. (O.) v Crown Court at Harrow* [2003] 1 W.L.R. 2756, Q.B.D.).

Execution “withdrawn, satisfied, or stopped”: see WITHDRAWN.

SAVAGE ANIMAL. See ANIMAL.

SAVE. A bequest of a fund to trustees upon trust to pay the annual income to testator’s wife for life, with a direction that “all moneys which shall be saved” thereout by the trustees and wife shall go to A, has no application as regards income actually paid to the wife, but applies to income in the trustees’ hands at the wife’s death which she has allowed to remain in their hands, i.e. *semble*, which she has not demanded (*Wood v Menzies*, 9 Macph. 775).

“Save and except”: see *Savill v Bethell* [1902] 2 Ch. 538, cited EXCEPTION; RESERVING.

“Can save”: see LEFT.

Despatch money for time “saved”: see DESPATCH.

SAVING GATEWAY ACCOUNT. Stat. Def., Saving Gateway Accounts Act 2009 s.1.

SAVINGS. “Savings” of income trust funds, may well bear the sense of something in the hands of the trustees not paid over; and includes a proportionate part of an annuity for the time being between the last payment and the death of the annuitant (*Re Rosenthal*, 6 W.R. 139).

Wife’s savings: see *Finlay v Darling* [1897] 1 Ch. 719, cited ENTITLED; *Askew v Rooth*, L.R. 17 Eq. 426, cited PURCHASED. See further *Re Dunbar*, 42 Sc. L.R. 555, cited CONQUEST; *Re Mackenzie* [1911] 1 Ch. 578.

A wife’s savings out of housekeeping moneys supplied by her husband belong to the husband: see *Birkett v Birkett*, 98 L.T. 540; see also *Hoddinott v Hoddinott* [1949] 2 K.B. 406.

“Savings, provisoes, and indemnities” (Treason Act 1765 (c.53)): see *Miller v Salomons* (1852) 7 Ex. 475, on appeal *Salomons v Miller* (1853) 8 Ex. 778.

“Savings certificates”: Stat. Def., Capital Gains Tax Act 1979 (c.14) s.71.

SAVINGS INCOME. Stat. Def., Income Tax Act 2007 s.18.

SAWCES. See SALICETUM.

SAY. “Say about”: “In *M’Connel v Murphy* (L.R. 5 P.C. 203), where the sale was ‘of all the spars manufactured by A, say about 600’, the words ‘say about 600’ were held to be words of expectation and estimate only, not amounting to an understanding that the quantity should be 600. The effect of the word ‘say’ when prefixed to the word ‘about’ was considered as emphatically marking the vendor’s purpose to guard himself against being supposed to have made any absolute promise as to quantity” (Benj. (8th edn) 707; see also Black. (2nd edn) 216). But in a charterparty a contract to deliver “a full and complete cargo . . . say about” a specified quantity, the words “say about” would bear a different meaning from what they would in an ordinary contract, and would not be mere words of expectation, but are words of limitation and therefore contract (*Morris v Levison*, 1 C.P.C. 155; see Abbott 241; Blackb. 216.).

“Say from”: in a contract for sale “say from 1,000 to 1,200 gallons”, these are words of expectation (*Gwillim v Daniel* (1835) 2 Cr. M. & R. 61). But in *Tanvaco v Lucas* (28 L.J.Q.B. 150, 301), a contract for “about 2,000 quarters, say from 1,800 to 2,200 quarters”, was, in view of its other stipulations, construed as fixing a minimum and maximum limit.

“Say, not less than”: in a contract for sale of wool, “say not less than 100 packs”, these are not mere words of expectation; but amount to a contract to deliver at least that quantity (*Leeming v Snaith*, 16 Q.B. 275; see also *Bourne v Seymour*, 24 L.J.C.P. 202; NOT LESS).

If against the total of the items of a solicitor’s bill he adds “say” a lesser sum than the total, yet still it is that total which is the amount of the bill as regards the costs of its taxation (*Re Carthew*, 54 L.J. Ch. 134).

See further, as to the use of the word “say”, *Philips v Astling*, 2 Taunt. 211. See MORE OR LESS; THEREABOUTS.

SCAFFOLDING. “The ordinary meaning of the word ‘scaffolding’ is a structure used outside or inside a building, and made to enable a workman to construct or repair

the building” (per Mathew L.J., *Elvin v Woodward* [1903] 1 K.B. 838), in which case the use of an ordinary pair of painter’s steps to enable a workman to paint a wall above the height he could reach from the ground might justify a finding that they were a scaffolding; even a ladder may be a scaffolding if its real purpose is the same as that of scaffolding (*O’Brien v Dobbie* [1905] 1 K.B. 346). See further *Sellars v Campbell*, 40 Sc. L.R. 643; but see *M’Donald v Hobbs*, 2 Fraser 3.

It is clear that a “scaffolding” may be inside as well as outside a building (*Hoddinott v Newton*, above), and in *Maude v Brook* [1900] 1 Q.B. 575, Smith and Rigby L.JJ. held that the construction extends to the inside of a room in a building; but it is submitted that the preferable opinion was given by Collins L.J., when, in the same case, he said, “in my opinion the scaffolding contemplated by the statue is one system of scaffolding for the whole building by means of which it is being constructed or repaired”.

A ladder placed outside a building, one end of a plank being tied to one of its rungs, is not a “scaffolding” (*Wood v Walsh* [1899] 1 Q.B. 1009, cited REPAIR); but planks and trestles may be a “scaffolding” (*Hoddinott v Newton*, above), and in *Maude v Brook*, (above) the majority of the court held that trestles with loose planks laid across to enable the workman to plaster the ceiling of a room nine feet high, formed a “scaffolding”! But see the judgment of Collins L.J. See further *Veazey v Chattle* [1902] 1 K.B. 494; *Marshall v Rudeforth* [1902] 2 K.B. 175; PLANT. See also *Crowther v West Riding Window Cleaning Co* [1904] 1 K.B. 232; *Fletcher v Hawley*, 21 T.L.R. 191.

“Scaffold” (Building (Safety, Health and Welfare) Regulations 1948 (SI 1948/1145) regs 3, 5) may include:

(a) Youngman’s staging, when laid on a roof for the purpose of workmen getting to their work (*Conolly v McGee* [1961] 1 W.L.R. 811; Construction (Working Places) Regulations 1966 (No.94) regs 3(1)(a), 4(2)).

(b) Planks on trestles put up for the purpose of painting the roof of a railway station (*Maloney v A. Cameron* [1961] 1 W.L.R. 1087; sub. nom. *Moloney v A. Cameron* [1961] 2 All E.R. 934).

(c) A single plank joining the top of three steps to the ground, used as a gangway (*Conlan v Glasgow Corp* (1964) S.L.T. (Notes) 42).

(d) Planks placed on a roof some two feet below the rim of the one on which the man was working (*Harris v Brights Asphalt Contractors* [1953] 1 Q.B. 617).

(e) An improvised plank bridge across a shallow trench (*Byers v Head Wrightson & Co* [1961] 1 W.L.R. 961).

(f) An unsafe board between a scaffold and a stack of bricks (*Taylor v Sayers* [1971] 1 W.L.R. 561).

(g) A single plank laid over concrete steps (*Conlan v Glasgow Corp* (1964) S.L.T. 134).

But cannot include a permanent structure, part of a building which is being built (*Curran v Neil (William) & Son* [1961] 1 W.L.R. 1069).

“Scaffold”, “ladder scaffold”, “suspended scaffold”, “trestle scaffold”: Stat. Def., Building (Safety, Health and Welfare) Regulations 1948 (SI 1948/1145) reg.3(2).

SCALE. “Solicitor’s scale fee”: see CONVEYANCE; DEDUCE; PREPARE.

“Scales”: Stat. Def., Customs and Excise Act 1952 (c.44) s.303.

SCANDALOUS. A pleading is “scandalous” (R.S.C. Ord.19 r.27, now Ord.18 r.19) which alleges anything unbecoming the dignity of the court to hear, or is contrary to

good manners, or which charges a crime immaterial to the issue. But the statement of a scandalous fact that is material to the issue is not a scandalous pleading (*Millington v Loring*, 6 Q.B.D. 190; *Christie v Christie*, 8 Ch. 499; see also *Re R.* [1951] P. 10).

For examples of scandalous pleading: see *Blake v Albion Assurance*, 45 L.J.C.P. 663; *Lee v Ashwin*, 1 T.L.R. 291; *Coyle v Cuming*, 27 W.R. 529; *Duncan v Vereker* [1876] W.N. 64; *Bright v Marner* [1878] W.N. 211. Cp. FRIVOLOUS OR VEXATIOUS.

“Immorality or scandalous conduct detrimental to the partnership business”: see *Barnes v Young* [1898] 1 Ch. 414, cited SUFFICIENT. See also REASON; FLAGRANT.

“Scandalous, frivolous or vexatious” (Industrial Tribunals (Rules of Procedure) Regulations 1985 (SI 1985/16) Sch.1 r.12(2)(e)). These words refer to the contents of a claimant’s application, not to his behaviour at the hearing (*O’Keefe v Southampton City Council* [1988] I.C.R. 419).

SCANDALOUS CONDUCT. In the context of the conduct of legal proceedings by a lawyer, scandalous conduct means the misuse of the privilege of the legal process in order to vilify others and the giving of gratuitous insult to the court in the process. It does not mean anything akin to its vernacular meaning of shocking (*Bennett v Southwark LBC*, T.L.R., February 28, 2002, CA).

SCANNING RECEIVER. Stat. Def., Justice and Security (Northern Ireland) Act 2007 Sch.3 para.1(3).

SCARCE RESOURCE. Telephone numbers are a scarce resource within the meaning of Directive 97/13 art.11(2) (*Bundesrepublik Deutschland v Isis Multimedia Net* (Case C-327/03) [2006] 4 C.M.L.R. 1, ECJ).

SCENE. Representation of “any scene or object” (s.2 of the Fine Arts Copyright Act 1862 (c.68)): see *Hanfstaengl v Empire Palace*, 63 L.J. Ch. 455.

“Further problems arise in the context of what is meant by ‘the scene’. If the victim is in the kitchen, and the defendant takes a knife from a drawer and kills him or her, for the purposes of paragraph 5A that knife was not taken ‘to the scene’. If in the same example the kitchen is at one end of the living room with no partition between the two, the victim is in the living room and the defendant takes a knife from the kitchen drawer and kills her, then again for the purposes of paragraph 5A this knife was not ‘taken to the scene’. The situation will be additionally complicated if one of the doors in the premises through which the assailant went with the knife had been open, or closed, or locked. The present group of cases demonstrates the difficulties.” (*Kelly v R.* [2011] EWCA Crim 1462.)

SCHEDULE. See INVENTORY; TERRIER.

As to when a schedule is restrictive, see SET FORTH.

SCHEDULED OFFENCE. A statutory expression of considerable importance in the context of Northern Ireland: see Stat. Def., s.65 and Sch.9 to the Terrorism Act 2000 (c.11) (replacing earlier regimes of scheduled offences).

SCHEME. “Scheme of arrangement of his affairs”: see Bankruptcy Act 1890 (c.71) ss.3, 6; Bankruptcy Act 1914 (c.59) s.16. Cp. “deed of arrangement”, under DEED; CESSION. As to the sanction of scheme of arrangement by the court, see *Re Pilling* [1903] 2 K.B. 50, distinguishing *Re E. A. B.* [1902] 1 K.B. 457, and disapproving observations on this last case in *Re Baines*, 86 L.T. 691; *Re Flew* [1905] 1 K.B. 278, cited SECURITY. See further DEBT.

“Scheme of arrangement” as regards companies: see Companies Act 1948 (c.38) ss.206–208.

Scheme for reduction of capital: see CAPITAL. See Companies Act 1948 (c.38) s.66 et seq.

“Scheme for the reconstruction of a Company” (Finance Act 1927 (c.10) s.55(1)). For a “scheme” of reconstruction to satisfy this section the business and the persons interested had substantially to be the same (*Brooklands Selanger Holdings v IRC* [1970] 1 W.L.R. 429).

“A scheme legally established” (s.29 of the Charitable Trusts Amendment Act 1855 (c.124)) meant a document, sanctioned by some properly constituted authority, containing directions for the administration of a charity; and did not include the instrument of foundation of the charity (*Re Mason’s Orphanage* [1896] 1 Ch. 54). See further *Att-Gen v National Epileptic Hospital* [1904] 2 Ch. 252. See *Dick v Audsley* [1908] A.C. 347, cited SELECT.

A “scheme of compensation” duly provided in accordance with s.3 of the Workmen’s Compensation Act 1897 (c.37), and accepted by a workman, precluded him from any remedy against his employer in respect of an accident in or about his employment (*Taylor v Hamstead Colliery Co* [1904] 1 K.B. 838).

Scheme of an education committee: see ss.4–6 and 11–16 of the Education Act 1921 (c.51); by s.17 of 1902 Act (c.19) the committee was to be “established” with a “scheme”, which “shall have effect as if enacted in this Act”, but might be “revoked or altered” by another authorised scheme (s. 21(3) of 1902 Act, above); therefore, where a subsisting scheme gave a council power to “determine” the order in which its committee should retire, which power the council exercised; held, that it was functus officio and could not vary that determination by a subsequent resolution (*Milward v Barry Urban Council* [1904] 2 Ch. 481).

“Scheme of reconstruction or improvement”, under s.13(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17), meant some public scheme, as, for example, the widening of a road, or destroying of a rookery: see *Mitchell v Townsend* [1921] 2 K.B. 91.

“A scheme”, within s.79 of the Transport Act 1947 (c.49), might have been constituted by a pre-existing scheme which had been altered (*British Transport Commission v London CC* [1953] 1 Q.B. 736).

A “scheme regulating the marketing of an agricultural product” within the Agricultural Marketing Acts 1931–48 is a scheme which introduces some orderly system of marketing that product, and, while a scheme might confer some discretionary powers on a board, one which is discretionary from start to finish cannot be a “scheme” under these Acts (*Tuker v Ministry of Agriculture* [1960] 1 W.L.R. 819).

“Scheme”: an arrangement for the administration of a charitable trust. See *Hanbey’s Will Trusts* [1954] Ch. 264.

Stat. Def., “references to a scheme are references to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions” (Finance (No.2) Act 2005 s.30(1)).

SCHEME OR ARRANGEMENT FOR THE BENEFIT OF EMPLOY-EEES. For the purposes of the Disability Discrimination Act 1995 the payment of sick pay by an employer under a contract of employment is not a scheme or arrangement for the benefit of employees (*Meikle v Nottinghamshire CC* [2004] 4 All E.R. 97, CA).

SCHISM. They are guilty of schism who “separate themselves from the communion of saints, as it is approved by the Apostles’ rules in the Church of England, and combine themselves together in a new brotherhood; accounting the

Christians who are conformable to the doctrine government rites and ceremonies of the Church of England to be profane, and unmeet for them to join with in Christian profession" (9th, Canons Ecc. 1604).

SCHOFIELD'S ACT. Parliamentary Costs Act 1865 (c.27).

SCHOLAR. To say of a physician "thou wert never scholar, and art not worthy to speak to a scholar" is slander per se, although it be urged that "a physitian may be no good scholar and yet a good physitian" (*Cawdry v Highley*, Cro.Car. 270, cited FOOL).

"A point was made on behalf of the school board that, as the word 'scholar' was used, the education in a board school was not confined to children. I do not agree; for the word 'scholar' and the word 'child' will be found indiscriminately used both in the Education Acts and in the Codes" (per Smith M.R., *R. v Cockerton* [1901] 1 K.B. 731, 732). See ELEMENTARY.

SCHOLARSHIP. "Income arising from a scholarship" (Income Tax Act 1952 (c.10) s.458; Income and Corporation Taxes Act 1970 (c.10) s.375) did not cover a loan made to an employee to enable her to attend a Technical College (*Clayton v Gothorp* [1971] 1 W.L.R. 999), but it did cover discretionary awards to the children of employees made, by the trustees of a fund set up by a company, to assist in meeting the costs of further education (*Wicks v Firth* [1983] 2 W.L.R. 34).

Stat. Def., Universities and Colleges (Emergency Provisions) Act 1939 (2 & 3 Geo. 6, c.106) s.7; Income and Corporation Taxes Act 1970 (c.10) s.375(2); Finance Act 1983 (c.28) s.20(4).

SCHOOL. "School" (Education Act 1944 (c.31) s.10). A school is an institution with a character of its own which can exist independently of the buildings in which it is housed from time to time (*Bradbury v Enfield LBC* [1967] 1 W.L.R. 1311).

A reference in a will to a school was held to refer to a Sunday-school (*Re Strickland's Will Trusts* [1936] 3 All E.R. 1027).

"School bursary": see *McQuaker v Ballantrae Educational Trust*, 28 Sc. L.R. 377.

"School of learning" (Charitable Gifts Act 1601 (c.4)) included a school for the education of gentlemen's sons (*Att-Gen v Lonsdale* 1 Sim. 109; see also *Att-Gen v Nash* 3 Bro. C.C. 588).

A covenant not to carry on on demised premises a "school or seminary" was held to refer to a school for the education of boys and girls, and not to a school of music (*Lawrence v South County Freeholds Ltd* [1939] Ch. 656).

For the construction of the words "schools and charitable institutions, and poor and other objects of charity, or any other public objects", in a will, see *Re Bennett* [1920] 1 Ch. 305.

"Other schools": see *Re Stockport Schools* [1898] 2 Ch. 687, cited OTHER.

Stat. Def., Further and Higher Education Act 1992 (c.13) s.14; Finance Act 1994 (c.9) s.84(3) (new inserted s.32(11) of Finance Act 1991 (c.31)).

"School teacher": Stat. Def., Teachers' Pay and Conditions Act 1987 (c.1) s.7.

Stat. Def., Education Act 1944 (c.31) s.114; Education Act 1980 (c.20) s.34; Value Added Tax Act 1983 (c.55) Sch.6 Group 6; Public Health (Control of Diseases) Act 1984 (c.22) s.74; Building Act 1984 (c.55) s.126.

See CERTIFIED; CHARITY SCHOOL; DISCIPLINE; EDUCATION; ELEMENTARY; ENDOWED; FREE GRAMMAR SCHOOL; GRAMMAR SCHOOL; HOUSE; NON-VESTED NATIONAL SCHOOL; PARISH SCHOOL; PUBLIC ELEMENTARY SCHOOL; PUBLIC SCHOOL; RAGGED SCHOOL; RECOGNISED; SCIENCE; SUNDAY SCHOOL; TECHNICAL; VOLUNTARY SCHOOL.

SCHOOL

SCHOOL (MAINSTREAM). Stat. Def., a maintained school that is not a special school, or an Academy school that is not a special school, Children and Families Act 2014 s.83.

SCHOOL (MAINTAINED). Stat. Def., a community, foundation or voluntary school, or a community or foundation special school not established in a hospital, Children and Families Act 2014 s.83.

SCHOOL OR UNIVERSITY EDUCATION. “While it is unnecessary to produce a precise definition in this judgment of the Community concept of ‘school or university education’ for the purposes of the VAT system, it is sufficient, in this case, to observe that that concept is not limited only to education which leads to examinations for the purpose of obtaining qualifications or which provides training for the purpose of carrying out a professional or trade activity, but includes other activities which are taught in schools or universities in order to develop pupils’ or students’ knowledge and skills, provided that those activities are not purely recreational.” (*Werner Haderer v Finanzamt Wilmersdorf* (Case C-445/05) ECJ at [26].)

SCHOOLMASTER. See MASTER; TUTOR.

SCIENCE. “Science”, in its general meaning, is not confined to pure or speculative science, but includes applied science (per Lord Macnaghten *Inland Revenue Commissioners v Forrest*, 15 App. Cas. 353, 354).

The holding of examinations with the view to granting professional qualifications, is not for “promotion of science”; therefore the property of the Royal College of Surgeons is not exempt under the section last considered, except as to such minor parts thereof, e.g. the museum, as can be shown to be for scientific purposes (*Re Royal College of Surgeons* [1899] 1 Q.B. 871; see further *Jenner Institute v St. George’s*, above).

“Practical sympathy in the pursuit of science”: see *Weir v Crum Brown* [1908] A.C. 162, cited PURSUIT.

See EDUCATION; JOINT STOCK COMPANY; SCIENTIFIC. Cp. LITERARY.

SCIENTER. “Scienter” is the prior knowledge of the quality or condition of a thing, e.g. in an action against the owner of a dog for damage caused by the dog biting mankind, you must prove the scienter, i.e. that the owner knew of his dog’s propensity to bite mankind (*Osborn v Chocqueel* [1896] 2 Q.B. 109); that proved, the owner of the dog is bound to keep it secure at his peril, even against an incitement of the animal by a third person: see *Baker v Snell* [1908] 2 K.B. 825; see also *Glanville v Sutton*, 97 L.J.K.B. 166; see hereon Rosc. N.P. (20th edn), 771. As regards such damage to cattle or sheep, the scienter was not necessary (Dogs Act 1865 (c.60) s.1).

In an action on an express warranty, scienter is immaterial and irrelevant, e.g. proof that the seller of goods knew that they were not according to warranty is not required (*Williamson v Allison*, 2 East, 446).

SCIENTIFIC. “Scientific or local investigations” (Judicature Act 1925 (c.49) s.89). A case does not require to be tried before a referee on the ground that it involves scientific investigation merely because technical questions are involved (*Osenton (Charles) & Co v Johnston* [1942] A.C. 130).

“Scientific work” is of narrower import than “technical work” (*Battersea BC v British Iron & Steel Research Association* [1949] 1 K.B. 434).

“Scientific research”: Stat. Def., Capital Allowances Act 1968 (c.3) s.94; Income and Corporation Taxes Act 1970 (c.10) s.362(3); Town and Country Planning Act 1971 (c.78) s.66(3).

“Literary or scientific institution”: see LITERARY.

“Scientific investigation”: see PROLONGED EXAMINATION.

See SCIENCE.

SCOLD. “‘Scolds’, in a legal sense, are troublesome and angry women who, by their brawling and wrangling amongst their neighbours, break the public peace, increase discord, and become a public nuisance to the neighbourhood” (Jacob, adopted in *United States v Royall*, 3 Cranch, 622). See Tumbrell; see also 9 Shropshire Archaeological Society, 106 *et seq.*

SCOT. Scot is “a customary contribution laid upon all subjects according to their ability” (Spelm. 505; see also Cowel). In *Waller v Andrews* ((1838) 3 M. & W. 312), “scots”, in a tenant’s agreement to pay all outgoings, rates, taxes, scots, etc. was treated as an extensive word, and was held to include an extraordinary assessment by the Commissioners of Sewers for work of permanent benefit (see hereon 2 Platt, 170). See OUTGOING.

In *Termes de la Ley*, “scot” is not spoken of as a contribution or burden; the definition there given is “scot”, that is to be quit of a certaine custome, as of common tallage made to the use of the sheriffe or bayliffe”.

SCOT AND LOT. Those who pay “scot and lot” are those who pay to church and poor (per Hardwicke C., *Att-Gen v Parker*, 3 Atk. 557). Cp. SCOT; LOT AND COPE.

But probably the primary meaning is to pay scot, i.e. one’s portion of local taxation, and to bear lot, i.e. to serve in turn the local offices (see Creasy on the Constitution (3rd edn), 271). “Bear” is, however, applied to both, as in the phrase “bearing neither scot, lot, nor other charges” (Cowel 1, Scot).

See further, as to scot and lot boroughs, Hallam’s *Constitutional History* (8th edn), 40–47.

SCOTALE. “‘Scotale’ is an extortion prohibited by the Statute of Charta de Foresta, c.7, and it is where any officer of the forest keeps an ale-house, to the intent that he may have the custome of the inhabitants within the forrest to come and spend their money with him, and for that he shall winke at their offences committed within the forest” (*Termes de la Ley*; see further Cowell).

SCOTCH WHISKY. When whisky is sold as Scotch whisky, the representation that it is Scotch whisky carries the meaning that the entire contents of the container in which it is sold were distilled in Scotland (*Henderson & Turnbull v Adair* (1939) S.C. (J.) 83).

Stat. Def., Finance Act 1969 (c.32) Sch.7 para.1.

Stat. Def., Scotch Whisky Regulations 2009 (SI 2009/2890) reg.3.

SCOTS. “Scots criminal law” and “Scots private law”: Stat. Def., Scotland Act 1998 (c.46) s.126(4) and (5).

SCOTS LAW. “The question that arises in the present proceedings for judicial review is the meaning of the expression ‘Scots law’ in the legislation governing legal aid, and in particular s.6(1) of the Legal Aid (Scotland) Act 1986. Under s.6(1), advice and assistance is available to a client of a solicitor ‘on the application of Scots law to any particular circumstances which have arisen in relation to the person seeking advice’ . . . Scots law includes rules of private international law that refer to the law of other jurisdictions. For example, if a Scot is injured in a road accident in England, he may go to a Scottish solicitor for advice, and would obtain legal assistance for a diagnostic interview. In such a case, however, the solicitor’s function would be to indicate that the accident was governed by English law, not Scots law, and would

SCOTTISH

direct his client to an English lawyer. That is a fairly straightforward piece of advice, and it is easy to see why it would be covered by a diagnostic interview. Likewise, Scots law has a rule, discussed in para.[12] above, that international treaties have no direct effect in domestic law. Thus if a solicitor's client seeks to found on an international treaty such as the Convention, the advice required would be very straightforward, namely that as a matter of Scots Law he cannot do so. In both of these cases the merits of the claim in England or in the Strasbourg Court are not part of Scots law; the application of Scots law is confined to identifying this rule and advising that in consequence the client must look for advice elsewhere.... In all the circumstances, therefore, I am of opinion that the expression 'Scots law' as used in s.6(1) of the 1996 Act does not extend to the giving of advice as to the making of an application to the European Court of Human Rights. Consequently the respondents' refusal to treat the advice given to the petitioner as a distinct matter for the purposes of the Legal Aid (Scotland) Act 1986 and the Advice and Assistance (Scotland) Regulations 1996 was correct." (*Donaldson, Re Judicial Review* [2012] ScotCS CSOH 176.)

SCOTTISH ADMINISTRATION. Stat. Def., s.126(1) of the Scotland Act 1998 (c.46).

SCOTTISH BODY. Stat. Def., s.10(1) of the International Development Act 2002 (c.1).

SCOTTISH FISHING BOAT. Stat. Def., "means a fishing vessel which is registered in the register maintained under s.8 of the Merchant Shipping Act 1995 and whose entry in the register specifies a port in Scotland as the port to which the boat is to be treated as belonging" (Aquaculture and Fisheries (Scotland) Act 2013 s.53).

SCOTTISH HEALTH SERVICE. Stat. Def., National Health Service Act 2006 s.93(3).

SCOTTISH INSHORE REGION. Stat. Def., Marine and Coastal Access Act 2009 s.322.

SCOTTISH LEGISLATION. Stat. Def., s.70(9) of the Scotland Act 1998 (c.46).

SCOTTISH OFFSHORE REGION. Stat. Def., Marine and Coastal Access Act 2009 s.322.

SCOTTISH PARLIAMENT. Stat. Def., s.1 of the Scotland Act 1998 (c.46).

SCOTTISH SEAL. Stat. Def., s.2(6) of the Scotland Act 1998 (c.46).

SCOUNDREL. See CHEAT.

SCRAP (SUPPLY FOR). Stat. Def., "that is to say, for the value of materials included in the products rather than for the value of the products themselves" (Construction Products Regulations 2013 reg.8(7)(a)(ii)).

SCRAP METAL. "Scrap metal" (Scrap Metal Dealers Act 1964 (c.69) s.9(2)) should be given the wider interpretation, i.e. inclusive of but not limited to the words which follow (*Jenkins v Cohen (A.) & Co* [1971] 1 W.L.R. 1280).

A motor vehicle dismantler, who purchased old cars primarily for the purpose of dismantling them and selling the parts, was held not to be a "scrap metal dealer" within the meaning of ss.1, 9 of the Scrap Metal Dealers Act 1964 (c.69) (*Such v Gibbons* [1981] R.T.R. 126).

Stat. Def., Scrap Metal Dealers Act 1964 (c.69) s.9(2).

Stat. Def., Scrap Metal Dealers Act 2013 s.21.

SCRAP METAL DEALER. Stat. Def., Scrap Metal Dealers Act 2013 s.21.

SCRAP STEEL. As to what was scrap steel for purposes of being carried at a special rate by rail, see *Ward Ltd v Midland Railway* [1917] 2 K.B. 278.

SCRIP. Strictly speaking, the “scrip”, or “scrip certificate”, of a company, is a certificate, transferable by delivery, entitling its holder to become a shareholder or bondholder in respect of the shares or bonds therein mentioned.

“In some companies nothing is required to convert scrip-holders into shareholders. Companies constituted on this principle are called scrip companies, and in them scrip and shares are synonymous . . . Usually, however, a person entitled to scrip does not acquire the rights of an actual shareholder until his scrip certificates have been delivered up and exchanged for share certificates, nor until his name has been inserted upon the company’s register of shareholders” (Lindley Comp. (5th edn), 66).

It was said that “scrip” as regards companies under Companies Act 1862 (c.89), had ceased “to exist, and has been abolished by the legislature” (per Turner L.J., *Elkington’s Case*, 2 Ch. 518); but see para.(4) below. In its original sense, “scrip” was used in respect of foreign loans (*Goodwin v Robarts*, 1 App. Cas. 476), banking companies (*Rumball v Metropolitan Bank*, 2 Q.B.D. 194, followed in *Webb v Alexandria Water Co*, 93 L.T. 339), and railway companies (*McIlwraith v Dublin Trunk Railway*, 7 Ch. 134), and those cases show that such scrip was NEGOTIABLE. The judgment in *Goodwin v Robarts*, (above) when in Exchequer Chamber ((1874–75) L.R. 10 Ex. 337), contains a review of history of the law as to negotiable instruments.

“Scrip” is popularly used as meaning the certificate of actual shares in a company (per Turner L.J., *Elkington’s Case*, above).

Receipt on scrip certificate: see *London & Westminster Bank v Inland Revenue Commissioners* [1900] 1 Q.B. 166, cited RECEIPT.

SCRIVENER. A “scrivener” is a person to whom money or other property is entrusted for the purpose of lending it out to others, at a profit payable to his principal, but also at a commission or bonus for himself whereby he seeks, wholly or in part, to gain his livelihood (*Harrison v Harrison*, 1 Esp. 555; *Lott v Melville*, 3 Sc. N.R. 346; *Ex p. Malkin*, 1 Rosc. 406; 2 Rosc. 27; *Hutchinson v Gascoigne*, Holt N.P. 507; *Ex p. Gem*, 2 Mont. D. & D. 90; per Parke B., *Wilkinson v Candlish* (1850) 5 Ex. 91; *Ex p. Dufaur*, 20 L.J. Bank. 38). In *Adams v Malkin* (3 Camp. 539, 540), Gibbs C.J., citing Boswell’s *Life of Johnson*, said that Jack Ellis was the last of the separate profession of scriveners; and the reporter adds this note from the Life: “Johnson; loq. It is wonderful, sir, what is to be found in London. The most literary conversation that I ever enjoyed was at the table of Jack Ellis, a money scrivener, behind the Royal Exchange, with whom, at one period, I used to dine generally once a week”.

See CHEVISANCE.

SCULPTURE. (Copyright, Designs and Patents Act 1988.) “Sculpture” should be given its ordinary, natural meaning in the 1988 Act (*Metix (UK) Ltd v GH Maughan (Plastics) Ltd* [1997] F.S.R. 718).

For the meaning of “sculpture” in the context of the Copyright, Designs and Patents Act 1988, see *Lucasfilm Ltd v Ainsworth* [2009] EWCA Civ 1328.

For the meaning of “sculpture” in the context of intellectual property, see *Lucasfilm Ltd v Ainsworth* [2011] UKSC 39.

SCUTAGE. “‘Escuage’ is called in Latine ‘scutagium’, that is, service of the shield” (Termes de la Ley, *Escuage*).

SCUTIGER. See ESQUIRE.

SEA. “The sea is either that which lies within the body of a county, or without.

“The part of the sea which lies not within the body of a county, is called the main sea, or ocean: see HIGH SEAS.

“The narrow sea, adjoining to the coast of England, is part of the wast and demesnes and dominions of the King of England, whether it lie within the body of any county or not: see SEA COAST.

“This is abundantly proved by that learned treatise of Master Selden called *Mare Clausum*; and therefore I shall say nothing therein, but refer the reader thither” (Hale, *De Jure Maris*, Ch.4).

The Thames at Woolwich was not “the sea” within s.1 of the Burial of Drowned Persons Act 1808 (c.75) (*Woolwich v Robertson*, 6 Q.B.D. 654). In that case Mathew J. said, “‘sea’ is used, in this Act, in its ordinary and popular sense, and in that sense, ‘sea’ is always used as distinguished from ‘river’”. Cp. CREEK.

“By the sea”: see *Lockhart v National Lifeboat Institution*, 40 Sc. L.R. 106, cited SEA SHORE. Cp. SEA BEACH.

“At sea”: see MARINER. See further *The Mowe* [1915] P. 1; AT SEA.

Stat. Def., Food and Environment Protection Act 1985 (c.48) s.24; “includes any estuary or arm of the sea” (Merchant Shipping Act 1995 (c.21) s.131(4)); Sea Fisheries Regulation Act 1966 (c.38) s.20; Prevention of Oil Pollution Act 1971 (c.60) s.29; Water Act 1973 (c.37) Sch.3 para.1(3); Dumping at Sea Act 1974 (c.20) s.12.

Ship “proceeding to sea”: see PROCEED TO SEA.

See BEYOND SEAS; BEING AT SEA; PERIL OF THE SEA; REALM.

SEA BIRD. See WILD BIRD.

SEA COAST. “The coast is, properly, not the sea but the land which bounds the sea; it is the limit of the land jurisdiction, and of the parishes and manors (bordering on the sea) which are part of the land of the county. This limit, however, and its character, varies according to the state of the tide; when the tide is in and covers the land, it is sea; when the tide is out, it is land as far as low-water mark; between high and low water mark it must, therefore, be considered as *divisum imperium*” (per Sir J. Nicholl, *R. v Forty Nine Casks of Brandy*, 3 Hagg. Adm. 275). See ENGLAND; FORESHORE; SHORE.

As to the three miles from the coast over which the sea jurisdiction extends, see *R. v Keyn* (1876–77) L.R. 2 Ex. D. 63, and the numerous authorities therein cited; *R. v Cunningham*, Bell C.C. 72; TERRITORIAL WATERS. *R. v Keyn* was reversed “in the very next session of Parliament” by the Territorial Waters Jurisdiction Act 1878 (c.73), which affirmed “in the strongest terms that the decision which had been arrived at by the majority (a very narrow majority) in that case was one that was not the law of England; because the Act does not purport simply to alter the law, but it declares the law and says, in very plain terms, that that is, and always has been, the law of this country” (per Halsbury C., *Carr v Francis* [1902] A.C. 181). The Crown, as the proprietor of the solum of the BED of the sea within the three miles limit, may make a grant of minerals therein to a subject (*Lord Advocate v Wemyss* [1900] A.C. 48).

SEA FISH. “On looking at the Acts of Parliament, I find the terms ‘floating fish’ and ‘shell fish’ (River Dee Act 1698 (c.24)), and that ‘floating fish’ is used in contradistinction to ‘shell fish’ (Oyster Fisheries Act 1790 (c.51) s.2), and ‘sea fish’ synonymously with ‘floating fish’” (per Ellenborough C.J., *Bridger v Richardson*, 2

M. & S. 572); in that case the opinion of the court was (though a decision thereon was unnecessary) that “sea fish”, in Fish Act 1605 (c.12) meant floating fish, and did not include shell fish.

Stat. Def., Fisheries Act 1981 (c.29) ss.14, 18; Agricultural Marketing Act 1983 (c.3) s.8; British Fishing Boats Act 1983 (c.8) s.9.

Stat. Def., “fish of any kind found in the sea, including shellfish but not salmon or migratory trout” (Aquaculture and Fisheries (Scotland) Act 2007 s.37(6)).

SEA FISHERIES LEGISLATION. Stat. Def., Aquaculture and Fisheries (Scotland) Act 2013 s.53.

SEA FLOOD. Grant of land with “sea flood” as boundary; held, not to include the SEA SHORE (*Smart v Dundee Magistrates*, 3 Paton 606; *Todd v Dunlop*, 2 Robinson’s Appeals 333; see further *Hunter v Lord Advocate*, 7 Macph. 899; see these cases stated by Lord Moncreiff in *Musselburgh Magistrates v Musselburgh Real Estate Co*, 42 Sc. L.R. 247, cited SEA BEACH).

SEA-GOING. A stevedore “is not, in any sense, a seaman or a sea-going person” (per Wills J., *R. v City of London Court*, 59 L.J.Q.B. 429, cited SEAMAN).

A “sea-going” SHIP (s.109 of the Merchant Shipping Act 1854 (c.104); ss.260, 261 of the Merchant Shipping Act 1894 (c.60)) means a ship which goes to SEA, using that word in its widest meaning, and does not include a vessel plying upon, or in the estuary of, a river (*Salt Union Co v Wood* [1893] 1 Q.B. 370).

“The inference is that a sea-going ship is a ship which ‘goes to sea’ and that a ship which remains within the United Kingdom is not a sea-going ship. What is not clear is whether a ship which remains within coastal waters is or is not a sea-going vessel. We need not resolve this question. Section 49 buttresses our conclusion that a vessel used in navigation is a vessel which is used to make ordered progression from one place to another, though we accept that an excursion arguably extends this concept to embrace a round trip. A sea-going vessel is a vessel which sets out to sea on a voyage. Thus s.42, which applies only to sea-going ships, implies a term into the contract of employment of seamen that the owner and the master will use all reasonable means to ensure the seaworthiness of the ship ‘for the voyage.’ The suggestion that the Waverunner was a sea-going ship is worthy of A.P. Herbert. By no stretch of the imagination could that craft be so described. While jet-skis are used on the sea in proximity to land, they do not go to sea on voyages nor, we suspect would they be seaworthy in heavy weather.” (*R v Goodwin* [2005] EWCA Crim 3184.)

SEA GREENS. Sea greens are “grounds overflowed by the sea in spring tides” (Jacob). See hereon *Aitkens Trustees v Caledonian Railway*, 41 Sc. L.R. 352.

SEA GROUNDS. By the grant of “sea grounds”, the soil, and not an easement merely, passes; “for, generally speaking, the soil passes by the word ‘ground’; as by the word ‘WOOD’, the soil in which the wood grows passes” (per Bayley J., *Scrutton v Brown*, 4 B. & C. 496).

SEA INSURANCE. Stat. Def., Revenue Act 1884 (c.62) s.8.

“Policy of sea insurance”: see policy. See further TIME POLICY; MARINE. Cp. SHIP’S RISK. See *Re National Benefit Insurance Co Ltd* [1928] 1 Ch. 74; affirmed [1929] A.C. 114.

SEA RISK. See *Harrisons Ltd v Shipping Controller* [1921] 1 K.B. 122.

SEA SHORE. A boundary of lands “by the sea-shore”; held, to entitle the proprietor to the foreshore down to the sea-ebb mark of ordinary tides (*Lockhart v National Lifeboat Institution*, 40 Sc. L.R. 106); in this case Lord Moncreiff said that a

boundary, “‘by the sea-shore’ and ‘by the SEA’ mean one and the same thing”; but see SEA BEACH; SEA FLOOD. So, where a piece of land was granted as bounded “on or towards the west by the sea shore”, it was held that the grantee took a direct access to the sea that the grantor had reserved no intermediate land between the land granted and the sea, and (per Romer L.J.) that the land on the western boundary that had been uncovered by a recession of the sea was, as between the parties, an increase belonging to the grantee (*Mellor v Walmesley* [1905] 2 Ch. 164); cp. *Scrutton v Brown*, 4 B. & C. 496, cited SHORE; *Espley v Wilkes* (1871–72) L.R. 7 Ex. 298, cited ABUT; *Brighton and Hove etc. Co v Hove Bungalows* [1924] 1 Ch. 372.

The word “seashore” when used to describe the boundary of land comprised in a conveyance means prima facie the “foreshore” (*Government of State of Penang v Ben Hong Oon* [1972] A.C. 425).

Stat. Def., Coast Protection Act 1939 (c.39) s.1(12); Sea Fisheries (Shellfish) Act 1967 (c.83) s.1.

Stat. Def., Coast Protection Act 1949 s.49.

Stat. Def., means—(a) the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide, and (b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity (Marine and Coastal Access Act 2009 s.147).

See FORESHORE; SEA COAST; SHORE.

SEA WALL. See *Keighley's Case*, 10 Rep. 139; *Hudson v Tabor*, 2 Q.B.D. 290; *Fobbing Commissioners v Regina*, 11 App. Cas. 449.

The right to let sea water through a gap in a sea wall to the land behind is unknown to the law, and to make a gap for this purpose is to commit an illegal act (*Symes and Jaywick Associated Properties v Essex Rivers Catchment Board* [1937] 1 K.B. 548). But cp. *Thomas & Evans, Ltd v Mid Rhondda Co-operative Society Ltd* [1941] 1 K.B. 381.

SEAL. The first entry for this term used to be simply: “A seal is essential to a deed”. The position is now complicated by s.1 of the Law of Property (Miscellaneous Provisions) Act 1989 (c.34). That section abolished the rule of law which “requires a seal for the valid execution of an instrument as a deed by an individual”. The section substitutes new requirements for the validity of a deed (including, in the case of a deed executed by an individual, attested signature). The abolition of the old rule does not apply to deeds executed by a person other than an individual (for which purpose a corporation sole does not count as an individual—subs.(10)). The section is not retrospective.

“Under the hands and seals”: an impression made with ink, by means of a wooden block, is a sufficient sealing (*R. v St. Paul Covent Garden*, 14 L.J.M.C. 109; Sug. Pow. (8th edn) 231, 232; *Sprange v Barnard*, 2 Bro. C.C. 585). “And if the party seal the deed with any seal besides his own, or with a stick, or any such like thing which makes a print, it is good” (Touch. 57). In *Re Sandilands* (L.R. 6 C.P. 411), it was held that a deed was proved to have been “sealed”, though no seal was affixed to it, because pieces of ribbon were inserted in the parchment opposite to the signatures on which seals were to have been put, and the attestation clause stated the deed to have been “signed, sealed, and delivered”; but when cited, that case seems always to be

distinguished as an exceptional application of an undoubted principle (see *National Provincial Bank v Jackson*, 33 Ch. D. 1; *Re Balkis Co*, 58 L.T. 300; *Re Smith*, 67 L.T. 64).

The presence of a seal against the signature of a party to a deed, is prima facie evidence that he sealed and delivered the document as his act and deed (per Channell J., *Marchant v Morton* [1901] 2 K.B. 832).

“Meticulous persons when executing a deed may still place their finger on the wax seal or wafer on the document, but it appears to me that, at the present day, if a party signs a document bearing wax or wafer or other indication of a seal, with the intention of executing the document as a deed, that is sufficient adoption or recognition of the seal to amount to due execution as a deed” (per Danckwerts J., in *Stromdale and Ball v Burden* [1952] Ch. 223).

As to the general law relating to a contract, not under seal, made by a corporation, see *Lawford v Billericay* [1903] 1 K.B. 772 (and cases there cited) approving and following *Clarke v Cuckfield*, 21 L.J.Q.B. 349, 354; *Mackay v Toronto Corp*, 88 L.J.P.C. 204; see further *Brooks v Torquay* [1902] 1 K.B. 601; *Spencer v Southall-Norwood*, 69 J.P. 308. Cp. *Bournemouth Commissioners v Watts*, 11 Q.B.D. 87, cited INCURRED; *Nixon v Erith*, 93 L.J.K.B. 756.

As to when the seal to a deed by an incorporated company may, by an outside person, be assumed to have been properly affixed, see *County of Gloucester Bank v Rudry* [1895] 1 Ch. 629, cited GOODWILL, distinguishing *D’Arcy v Tamar, etc. Railway*, L.R. 2 Ex. 158, cited QUORUM; see further *Re Bank of Syria* [1900] 2 Ch. 272, cited QUORUM.

A document, described as a “deed” and stating at its conclusion that it was “signed, sealed and delivered”, had a printed circle as the place for the seal. The person executing the document signed across the circle and the signature was witnessed. The document was held to be properly executed as a deed even though no seal had been affixed (*First National Securities v Jones* [1978] Ch. 109).

Stat. Def., Forgery Act 1913 (c.27) s.18.

See LS; SIGNED. See further EXCEED; SHALL; SMALL.

SEALED. The seal of a court, with the words “sealed with the seal of the court”, proves itself, and will be taken judicial notice of (*Doe d. Duncan v Edwards*, 1 P. & D. 408).

As to when the court whose seal is to be used has no seal, see *Re Court Bureau Co* [1891] W.N. 9.

SEAM. In relation to minerals, seam includes bed, lode, and vein: see Mines (Working Facilities and Support) Act 1923 (c.20) s.15.

See VEIN OR SEAM; IRON.

SEAMAN. Merchant Shipping Act 1894 (c.60) s.742: “seaman, includes every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship” (see thereon *The Wilhelm Tell*, 61 L.J.P.D. & A. 128). But “the employment must be to do the work of the SHIP” (per Jeune P., *The Ruby* [1898] P. 59); therefore a SHIP’S husband was not a “seaman” within s.10 of the Admiralty Court Act 1860 (c.10) (*The Ruby*). “A seaman may well be held to be ‘employed or engaged . . . on board’ ship, although at the particular point of time he may have been sent ashore on duties connected with the ship, such as obtaining stores or provisions, or taking a letter to the ship’s agent” (per Russell C.J., *R. v Lynch* [1898] 1 Q.B. 61). A stevedore “is not, in any sense, a seaman or a seagoing

person" (per Wills J., *R. v City of London Court*, 59 L.J.Q.B. 429); but, as regards the right to a maritime lien for wages, a caretaker of a vessel in dock for repairs preparatory to a voyage is a seaman (*R. v City of London Court*, 25 Q.B.D. 339), even though such caretaker be a woman (*The Jane and Matilda*, 1 Hagg. Adm. 187). See further CREW.

A man engaged in navigating a sprit-sail barge on the tidal waters of the Thames, especially if the barge was capable of going coasting voyages, was held to be a seaman within Employers and Workmen Act 1875 (c.90) s.13, and not a workman within s.10 of that Act (*Corbett v Pearce* [1904] 2 K.B. 422); *secus*, of a fireman on board a barge on a canal (*Oakes v Monkland Iron Co*, 21 Sc. L.R. 407), or of a man casually employed in warping a vessel from one side of a dock to another; see *Chislett v Macbeth* [1910] A.C. 220, approving *Oakes v Monkland Iron Co* and disapproving *Corbett v Pearce*, above.

A man may be a "seaman" within Merchant Shipping Act 1894 (c.60), though he is in port and has not signed articles for the next voyage, e.g. the storekeeper of a ship in port (*Thomson v Hart*, 28 Sc. L.R. 28).

"Seaman or apprentice" (ss.111, 112, and 216 of the Merchant Shipping Act 1894 (c.60)) includes one engaged for a foreign ship (*Hart v Alexander*, 36 Sc. L.R. 64).

The Lascars Act 1823 (c.80), and the subsequent Indian legislation relating to lascars, did not constitute a separate code of legislation for lascars which excluded the regulations of the Imperial Parliament; therefore, lascar seamen on a British ship were "seaman" within s.210 of the Merchant Shipping Act 1894, above, and had to have the same crew-space as other seamen (*Peninsular & Oriental Steam Navigation Co v The King* [1901] 2 K.B. 686).

A seaman doing his ordinary work on a vessel lying afloat in a dock was not a "workman" who, being injured, was entitled to compensation under the Workmen's Compensation Act 1897 (c.37) (*Houlder Line v Griffin* [1905] A.C. 224, cited DOCK); but that was altered by s.7 of the Workmen's Compensation Act 1906 (c.58), by s.13 of which "seaman" had the same definition as that for Merchant Shipping Act 1894, above. See also *Curtis v Black* [1904] 2 K.B. 529; *Admiral Fishing Co v Robinson* [1910] 1 K.B. 540, cited SHARE; *Moore v Manchester Liners* [1910] A.C. 498, cited EMPLOYMENT.

"Seaman at sea" (Wills Act 1837 (c.26) s.11) included a seaman who made a will in contemplation of sailing in wartime on a troopship undergoing refit (*In the Estate of Newland* [1952] P. 71). It also included a merchant seaman who made a nuncupative will after receiving orders to join a ship (*In the Estate of Wilson* [1952] P. 92). See also *Barnard v Birch* [1919] 2 Ir. R. 404.

The exception of "seamen" from the Conspiracy and Protection of Property Act 1875 (c.86) (see s.16), did not avail for seafaring men generally, but only for such as were actually "employed or engaged" within the definition of "seamen" in Merchant Shipping Act 1894 s.742, above (*R. v Lynch*, above).

In a warranty in the margin of a marine policy, "seamen besides passengers" means persons belonging to the ship's company, including cook, surgeon, boys, etc. (*Bean v Stupart*, 1 Doug. 14).

Admiralty Court Act 1861 (c.10) s.10 a pilot is a seaman; see also *The Ambatielos* [1923] P. 68.

"Seamen's wages": see discussion by Lord Blanesburgh, dissenting, in *Ellerman Lines, Ltd v Murray* [1931] A.C. 126.

Stat. Def., Merchant Shipping Act 1894 (c.60) s.742; Merchant Shipping Act 1906 (c.48) s.49(2); Merchant Shipping Act 1970 (c.36) s.67.

“Distressed seamen”: see PASSENGER. See further DISTRESSED.

“Advance notes”: see ADVANCE.

See BRITISH SEAMAN; DEDUCTION; DRUNK; HOME; MARINER; THROUGH; WILFUL DISOBEDIENCE.

SEARCH. To “enter or be” on land “in search or pursuit of game”, etc. (Game Act 1831 (c.32) s.30), the game sought for had to be live game (*Kenyon v Hart*, 34 L.J.M.C. 87; *Tanton v Servis*, 43 J.P. 784); but if the justices found that the shooting from outside the land and the entering to pick up the game was all one connected act they would be upheld if they reached the conclusion that there was a “pursuit” of game within the section, which pursuit began whilst the game was alive (*Osbond v Meadows*, 31 L.J.M.C. 238; but see observations in *Kenyon v Hart*, above), and that was so though there was an interval of some hours between the shooting and the entry and at the time of the entry some other person might have taken away the dead game (*Horn v Raine*, 67 L.J.Q.B. 533). See hereon *Dyer v Park*, 38 J.P. 294. It was not necessary to prove that the search or pursuit was with the intention to kill the game at the time (*Stiff v Billington* 84 L.T. 467). See ENTERING OR BEING.

A reservation of power “to search for, dig, bore, sink, win, work, lead and carry away” minerals, must be exercised by underground mining (*Bell v Wilson*, 1 Ch. 303, cited MINE).

“General search”; “particular search”: Stat. Def., Births and Deaths Registration Act 1874 (c.88) s.42; Marriage Act 1949 (c.76) s.67.

“Intimate search”: Stat. Def., “a search which consists of the physical examination of a person’s body orifices other than the mouth” (Police and Criminal Evidence Act 1984 (c.60) s.65 as inserted by Criminal Justice and Public Order Act 1994 (c.33) s.59(1)).

See REASONABLE SEARCH; WARRANT.

SEASHORE. See SEA SHORE.

SEASON. “During a particular season” (Caravan Sites and Control of Development Act 1960 (c.62) Sch.1 para.7). These words are intended to apply to agricultural workers engaged in seasonal work and should not be construed as applying to workers involved in agricultural operations throughout the year (*Vale of White Horse DC v Mirmalek-Sani*, *The Times*, February 10, 1993).

“Shipment during the season”: see SHIPMENT.

See ENGAGEMENT.

SEASONABLE TIME. In the claim of a custom to walk and ride over certain arable land at all seasonable times, what is a “seasonable time” is a question partly of law and partly of fact; but when the corn is standing on the land is not a “seasonable time” for the exercise of such a custom (*Bell v Wardell*, Willes, 202).

SEASONABLE WOOD. Semble, “seasonable wood” is as nearly as possible equivalent to “coppice” (see per Kay L.J., *Dashwood v Magniac* [1891] 3 Ch. 306, cited TIMBER).

SEA WORTHY. “Seaworthy” at common law and within the meaning of art.3 r.1 of The Hague Rules means that the ship, with master and crew, are in sufficient condition and fitness to meet the perils likely to be encountered on the voyage, and to convey the cargo in safety (*Actis Co v Sanko Steamship Co*, *The Aquacharm* [1982] 1 W.L.R. 119). The obligation to make a ship seaworthy includes an obligation to ensure

that it is fit to carry cargo (*Empresa Cubana Importadora de Alimentos v Iasmos Shipping Company SA, The Good Friend* [1984] 2 Lloyd's Rep. 586).

As to presumption of unseaworthiness if the ship is lost soon after leaving port: see *Ajum Goolam Hossen v Union Marine Insurance* [1901] A.C. 362, approving *Pickup v Thames & Mersey Marine Insurance*, 3 Q.B.D. 594.

"An exception from loss from unseaworthiness does not restrict that implied warranty (*Quebec Marine Insurance v Commercial Bank of Canada*, above). Where the ship is not seaworthy when she sails on her voyage, this is not remedied by her becoming so afterwards and before loss (*ibid.*, following *Forshaw v Chabert* 3 Brod. & B. 158, and overruling *Weir v Aberdeen* 2 B. & Ald. 320, 324, on this point)" (Rosc. N.P. (17th edn) 424).

As to the meaning of the words "seaworthiness admitted" in a policy of insurance, see *Cantiere Meccanico Brindisino v Janson* [1912] 3 K.B. 452; see also *Standard Oil Co v Clan Line SS Co* [1924] A.C. 100.

"Seaworthy trim": see *Britain Steamship Co v Dreyfus & Co*, 51 T.L.R. 307.

See DUE DILIGENCE; READY FOR SEA.

SEAT OF ARBITRATION. See JURIDICAL SEAT OF ARBITRATION.

SECK RENT. See RENT SECK.

SECOND COUSIN. A testamentary gift to "second cousins" of the testator applies only to persons having the same great-grandfather or great-grandmother as himself, unless the nature of the gift or the wording of the will shows that other persons were meant to be included (*Re Parker, Brentham v Wilson*, 15 Ch. D. 528; 17 Ch. D. 262, which case see for observations by Jessel M.R., on *Mayott v Mayott*, 2 Bro. C.C. 125; see further *Bridgnorth v Collins*, 15 Sim. 538). But where there are no real "second cousins", then first cousins once removed will take; but not first cousins twice removed (*Slade v Fooks*, 8 L.J. Ch. 41; *Re Bonner, Tucker v Good*, 19 Ch. D. 201; *Wilks v Bannister*, 30 Ch. D. 512). See further *Charge v Goodyer*, 3 Russ. 140; *Glasier v Foyster*, 39 S.J. 656.

See COUSIN; FIRST COUSIN.

SECOND HAND. Merchant Shipping Act 1894 (c.60) Pt 4 s.370: "'Second hand' means, with respect to a fishing boat, the mate, or person next to the skipper, in authority or command on board the boat".

SECOND-HAND GOODS. An animal can be second-hand goods for the purposes of the Sixth Directive 77/388 on Value Added Tax (*Forvaltnings AB Stenholmen v Riksskatteverket* [2004] 2 C.M.L.R. 56, ECJ).

"Second-hand goods or marine stores": see *Kelly v Rice* [1906] 2 Ir. R. 1, cited GENERAL DEALER.

SECOND MARRIAGE. (Offences Against the Person Act 1861 (c.100) s.57.) "Second marriage" referred to the second marriage charged in the indictment; it was immaterial that the defendant had gone through other bigamous ceremonies (*R. v Taylor* [1950] 2 K.B. 368).

"So long as she continues unmarried": see UNMARRIED.

See BIGAMY; MARRY; WIDOW.

SECOND MORTGAGE. See PUISNE.

SECOND OFFENCE. "When a 'second offence' is the subject of distinct punishment, it is an offence committed after conviction of a first" (Maxwell (9th edn) 354, citing 2 Inst. 468), and so held as regards "second offence" in Licensing Act 1872 (c.94) s.3 (*R. v South Shields Licensing Justices* [1911] 2 K.B. 1; see further 1 Hale

P.C. 686); and a penalty for a second offence can only be inflicted where both convictions are under the same enactment, although each might be supported by the same evidence (*Ex p. Anthers, or Authers*, 22 Q.B.D. 345).

“The second time . . . for any offence” (Town Police Clauses Act 1847 (c.89) s.50). A taxi proprietor can have his licence revoked even though the “second offence” was not identical with the first (*Bowers v Gloucester Corporation* [1963] 2 W.L.R. 386).

SECONDARY. “‘Secondary’ is the technical medical word for a disease which is not the primary cause of death. If a man falls through the ice and is drowned, that is death by accident; but if he walks home in his wet clothes, and catches a cold which settles on his lungs, and he dies, that is death from a ‘secondary cause’” (per Mellish, arg., *Smith v Accident Insurance*, L.R. 5 Ex. 302; see hereon judgment of Kelly C.B. (the case, however, was decided on another point); see also *Fitton v Accidental Death Insurance*, 34 L.J.C.P. 28). See ACCIDENT.

“Secondary action” (Employment Act 1980 (c.42) s.17(3)). Where there was a contract of towage between a tug company and the sub-charterers of a vessel, the action of the tug crew in refusing to tow the vessel was “secondary” to the trade dispute between the owners of the vessel and its crew (*Merkur Island Shipping v Laughton* [1983] 1 All E.R. 334). Where, in furtherance of its dispute with company A, a union instructs its members working for the respondents to breach their contracts of employment, with the purpose of disrupting the respondents’ business with company B, this is “secondary action” within the meaning of s.17(3) so that there is no “trade dispute” for the purposes of s.13(1) of the Trade Union and Labour Relations Act 1974 (c.52) between the union and the respondents, notwithstanding that companies A and B are associated (*Dimbleby and Sons v National Union of Journalists* [1984] 1 All E.R. 751).

“Secondary education”: see *R. v Cockerton* [1901] 1 Q.B. 729, cited ELEMENTARY, and EVENING.

“Secondary conveyance”, “secondary evidence”: see PRIMARY.

SECONDARY LEGISLATION. Stat. Def., Welfare Reform Act 2012 s.39.

SECRET. The term “trade secret” was not restricted to information relating to particular scientific or technical processes but could include information gained in the course of business about customers or business activities (*TSB Bank Plc v Connell* (1997) S.L.T. 1255).

SECRET DISPOSITION. “Secret disposition of the dead body of the said child”, to conceal the birth thereof (Offences Against the Person Act 1861 (c.100) s.60); these words “include cases in which the body is placed in a situation where it is not likely to be found except by accident or upon search, although the body is in no way concealed from any one who happens to go to that place” (Steph. Cr. (9th edn) 228, citing *R. v Brown*, L.R. 1 C.C.R. 244); see also *R. v Perry*, 24 L.J.M.C. 137; *R. v Cook*, 22 L.T. 216. In a note, the learned author asks: “If a woman were to leave a child’s body by night in the middle of a street, or to drop it by day in a crowd of people, there would be an effectual concealment of the birth, but would there be a ‘secret disposition’ of the body”? See further *R. v Rosenberg*, 70 J.P. 264.

SECRET PROFIT. In all fiduciary relationships—e.g. cestui que trustee and trustee, company and its directors, master and servant, principal and agent—the fundamental rule is that the person entrusted with, or employed to discharge, a duty, is not to make a secret profit thereby, for a “watch-dog has no right, without the knowledge of his master, to take a sop from a possible wolf” (per Bowen L.J., *Re*

North Australian Co [1892] 1 Ch. 341); the sop belongs to the master. The master need not pay such a watch-dog any remuneration (*Salomons v Pender*, 34 L.J. Ex. 95), and may recover such remuneration as he may have ignorantly paid (*Andrew v Ramsay* [1903] 2 K.B. 635; *Powell v Jones* [1905] 1 K.B. 11); but see *Hippesley v Knee* [1905] 1 K.B. 1, in which case *Salomons v Pender* and *Andrew v Ramsay* were distinguished. See also *Stubbs v Slater* [1910] 1 Ch. 632, cited PLEDGE; see further *Bartram v Lloyd*, 90 L.T. 357; *Re Waterman's Will Trusts* [1952] 2 T.L.R. 877.

The taking of a secret profit is a good ground for dismissing the servant: see *Federal Supply, etc. Co v Angehrn*, 30 L.J.P.C. 8, cited CONDONATION.

Company and its directors: *Re Sale Hotel Co*, 78 L.T. 368; *Gluckstein v Barnes* [1900] A.C. 240. See further *Costa Rica Railway v Forwood* [1901] 1 Ch. 746; *Re Leeds & Hanley Theatres Co* [1902] 2 Ch. 809; but see *Burland v Earle* [1902] A.C. 83, applying the principles of *New Sombrero Phosphate Co v Erlanger*, 3 App. Cas. 1218; *Re Lady Forest Co* [1901] 1 Ch. 582; *Re Darby*, 80 L.J.K.B. 180; *Jubilee Mills v Lewis* [1924] A.C. 958.

Master and servant and principal and agent: see BRIBERY; *Morison v Thompson*, L.R. 9 Q.B. 480; *De Bussche v Alt*, 8 Ch. D. 314, cited AQUIESCENCE; per Bowen L.J., *Boston Deep Sea Fishing Co v Ansell*, 39 Ch. D. 363, 364; *Reading v Att-Gen* [1951] A.C. 507; *Industries & General Mortgage Co v Lewis* [1949] 2 All E.R. 573; *Nordisk Insulinlaboratorium v Gorgate Products* [1953] 2 W.L.R. 879; MANAGING OWNER. See further per Stirling L.J., *Erskine v Sachs* [1901] 2 K.B. 504; Prevention of Corruption Act 1906 (6 Edw. 7, c.34).

SECRET TRUST. "When property is vested in a person for purposes not declared by the instrument devising or granting it, and it appears that but for the testator's or grantor's confidence that those purposes would be fulfilled the devise or grant would not have been made, a secret trust is created; and, on the ground that fraud would be committed by the devisee or grantee if he did not fulfil those purposes, that trust may in equity be enforced against him" (Godefroi (5th edn), Ch.11, which see hereon). See further *Re Pitt-Rivers* [1902] 1 Ch. 403; *O'Brien v Condon* [1905] 1 Ir. R. 51, cited DISTRIBUTE; *Blackwell v Blackwell* [1929] A.C. 318; *Ottaway v Norman* [1972] Ch. 698.

Therefore, in the case of a will, the devisee or legatee, charged with a secret trust, must be informed (of the document creating the trust) in the lifetime of the testator, and he is not affected by it if he discovers it after the testator's death; the "so-called trust does not affect the property except by reason of a personal obligation binding the individual devisee or legatee; if he renounces and disclaims, or dies in the lifetime of the testator, the person claiming under the document can take nothing against the heir-at-law or next-of-kin or residuary devisee or legatee—*Tee v Ferris*, 25 L.J. Ch. 437, is instructive on this point" (*Re Maddock* [1902] 2 Ch. 220; *Re Falkiner* [1924] 1 Ch. 88).

SECRET USE. "Secret use" (Patents Act 1949 (c.87) s.14(1)(e)) connotes conscious concealments of use on a subjective basis, so that where a manufacturer produced a drug without recognising its patentable potential and then blended it into capsules, where its identity was lost, then it was not being used "secretly" under this section when the capsules were sold (*R. v Patents Appeal Tribunal Ex p. Beecham Group* [1973] 1 Q.B. 318). The House of Lords (3 to 2) affirmed the decision of the Court of Appeal (*Bristol-Myers Co v Beecham Group* [1974] A.C. 646).

SECRETARY. Note signed “for A.B. & C.—C. D., Secretary”, does not make the secretary personally liable (*Alexander v Sizer*, L.R. 4 Ex. 102). If, however, a person signs in a way so as to make himself individually liable, he will not escape liability by adding “secretary” to his signature (*Bottomley v Fisher*, 31 L.J. Ex. 417). Cp. **MANAGER; DIRECTOR.**

A promissory note to the “secretary for the time being” of a company or other body, is bad because the payee is uncertain, for it cannot be known at the making of the document who will be secretary when it matures (*Storm v Stirling*, 23 L.J.Q.B. 298). See further *Timms v Williams*, 3 Q.B. 413.

“The duties of a company’s secretary are well understood. They are of a limited, and of a somewhat humble, character. ‘A secretary’, said Lord Esher, ‘is a mere servant. His position is that he is to do what he is told, and no person can assume that he has any authority to represent anything at all; nor can anyone assume that statements made by him are, necessarily, to be accepted as trustworthy without further inquiry’—*Newlands v National Employers Accident Association*, 54 L.J.Q.B. 430, repeated in *Barnett v South London Tramways*, 18 Q.B.D. 815” (per Lord Macnaghten *Whitechurch, Ltd v Cavanagh* [1902] A.C. 124). See further *Tendring Waterworks Co v Jones* [1903] 2 Ch. 615; *Lloyd v Grace Smith* [1912] A.C. 716.

Stat. Def., Companies Act 1948 (c.38) s.415.

See **CHIEF; COLONIAL.**

SECTION. “Section of a trade or industry” (Industrial Disputes Order 1951 (No.1376) art.1) refers to functions and not to localities. It refers to the section of a trade or industry which is some particular part of the trade or industry (*R. v Industrial Disputes Tribunal Ex p. Courage & Co* [1956] 1 W.L.R. 1062).

“Section of the public” (Race Relations Act 1968 (c.71) s.2(1)). Children in the care of foster parents are a “section of the public” within the meaning of this section (*Race Relations Board v Applin* [1973] 1 Q.B. 815). A club of limited membership is not a “section of the public”, because these words are words of limitation, “public” being used in contrast to “private” and there is no public element in a club of this nature (*Race Relations Board v Charter* [1973] 2 W.L.R. 299). Members of a club which provides amenities for properly elected members do not comprise a “section of the public” for the purposes of this section (*Charter v Race Relations Board* [1973] A.C. 868; *Dockers’ Labour Club and Institute v Race Relations Board* [1976] A.C. 285). But where facilities were provided for children in the care of local authorities, as opposed to purely private arrangements, they were held to be provided to a section of the public (*Applin v Race Relations Board* [1975] A.C. 259).

SECURE. The direction in Matrimonial Causes Act 1857 (c.85) s.32 to “secure” a gross or annual sum to a wife, did not authorise an order for payment direct to the wife, but meant that the sum was to be secured in such a way as to provide for her (*Medley v Medley*, 7 P.D. 122). “‘An order to secure’ seems to suggest a disposition or obligation of some sort, made or entered into pursuant to the order, as opposed to a mere direction to pay contained in the order itself” (per Jenkins L.J., in *Yates v Starkey* [1951] Ch. 465). See further *Twentyman v Twentyman* [1903] P. 86, cited **GROSS; Barker v Barker [1952] 1 All E.R. 1128.**

The words “or otherwise secure”, in s.10 of the Distress for Rent Act 1737 (c.19), enlarged the word “impound” with which they were there associated, and gave it a

SECURED

wider meaning than if it had been used alone (per Tindal C.J., *Thomas v Harries*, 9 L.J.C.P. 308; see further *Jones v Beinstein* [1900] 1 Q.B. 100, cited POSSESSION). See IMPOUND.

“Let under a secure tenancy” (Housing Act 1980 (c.51) ss.33(1), 34(1)). These words cannot apply to premises which ceased to be let under a periodic tenancy by October 3, 1980; the date on which that part of the 1980 Act came into force granting security of tenure to council tenants (*Harrison v Hammersmith and Fulham BC* [1981] 1 W.L.R. 650).

“I hereby undertake to secure the moneys you may have advanced or may hereafter advance”: held, insufficient, as not necessarily showing anything beyond a past consideration (*Raikes v Todd*, 8 L.J.Q.B. 35). Cp. ADVANCE; GIVEN; HAVING.

“Securing” the payment of royalties (Copyright Act 1911 (c.46) s.19(6)): see *Monckton v Pathé Frères Pathéphone, Ltd* [1914] 1 K.B. 395.

“The roof and sides . . . shall be made secure” (Coal Mines Act 1911 (c.50) ss.49, see now Mines and Quarries Act 1954 (c.70) s.48). This means that the roof must not be dangerous by reason of liability to fall (*Jackson v National Coal Board* [1955] 1 W.L.R. 132). “Secure” in these sections “imports a physical condition of stability which will ordinarily result in safety”. It does not imply absolute liability, but rather liability for physical defects which could reasonably have been foreseen (*Brown v National Coal Board* [1962] A.C. 574).

“It shall be the duty of every manager . . . to secure that any quarrying operations . . . are carried on so as to avoid danger from falls” (Mines and Quarries Act 1954 (2, c.70) s.108(1)) means that it shall be incumbent on every manager to secure, i.e. to achieve the result that any quarrying operations shall be carried on so as to avoid any falls which occur, producing any danger avoidable by practicable precautions (*Brazier v Skipton Rock Co* [1962] 1 W.L.R. 471).

A guard dog is “secured” within the meaning of the Guard Dogs Act 1975 (c.50) s.1(1) if a person coming to the guarded premises is able to remove himself from the ambit of the dog (*Hobson v Gledhill* [1978] 1 W.L.R. 215).

“Secure foothold”; “secure handhold” (Factories Act 1961 (c.34) s.29(2)): see HANDHOLD; FOOTHOLD.

SECURED. Sum “secured by an express trust” (Real Property Limitation Act 1874 (c.57) s.10); see *Re Davis* [1891] 3 Ch. 119, cited LEGACY; *Williams v Williams* [1900] 1 Ch. 152; see *Re Jordison* [1922] 1 Ch. 441.

“Secured by anchors” (Salmon and Freshwater Fisheries Act 1923 (c.16) ss.92(1)) denoted something which was secured so that it was fixed and stationary. A net to which anchors were attached to act as a brake or drag was not “secured” within the meaning of this section (*Percival v Stanton* [1954] 1 W.L.R. 300).

“Load carried . . . shall . . . be so secured” (Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078) reg.100). In considering whether a load had been adequately secured it was necessary to consider not only the actual securing of the load but also such matters as the positioning of the load, the weather and road conditions, including the clearance below any bridges on the route (*Walker-Trowbridge v DPP*, *The Times*, March 3, 1992).

See AMOUNT.

SECURED CREDITOR. A “secured creditor” is one who has security for his debt; see SECURITY.

In an administration of a deceased's estate, or of a liquidating company, the phrase "secured and unsecured creditors", etc. in s.10 of the Judicature Act 1875 (c.77), incorporated the bankruptcy rule which provided for payment of debts *pari passu*, except wages and rates and taxes (*Re Whitaker* [1901] 1 Ch. 9, overruling *Re Maggi, Winehouse v Winehouse*, 20 Ch. D. 545, and *Smith v Morgan*, 5 C.P.D. 337). An executor's right of retainer (see RETAIN) did not make him a "secured creditor" within this section (*Lee v Nuttall*, 12 Ch. D. 64, 65). See *Re McMurdo* [1902] 2 Ch. 684; INSUFFICIENT; RETAIN.

Stat. Def., Insolvency Act 1986 (c.45) s.248(a).

See CREDITOR.

SECURELY. "Securely fenced" (Factories Act 1937 (c.67) s.14, now Factories Act 1961 (c.34) s.14). For fencing to be secure, it must be substantial, properly maintained, and kept in position (*Massey v Lingwood*, (S. & P.) 89 S.J. 316); see also *Smith v Morris Motors* [1950] 1 K.B. 194. The same test should be applied in deciding whether a machine is securely fenced as is applied in deciding whether it is dangerous (*Burns v J Terry & Sons* [1951] 1 K.B. 454). "'Securely fenced' may well mean 'so fenced as to give security from such dangers as may be reasonably expected'" (per Lord du Parcq, *Carroll v Andrew Barclay & Sons* [1948] A.C. 477). A fence does not cease to be secure because by some perverted act the safeguards can be rendered nugatory (*Carr v Mercantile Produce Ltd* [1949] 2 K.B. 601). If the machine cannot be securely fenced it should not be used: see *Dennistoun v CE Greenhill Ltd* [1944] 2 All E.R. 434; *Mackay v Ailsa Shipbuilding Co* 1946 S.L.T. 104. The obligation to fence securely every dangerous part of any machine is absolute (*John Summers & Sons v Frost* [1955] A.C. 740). It is "an obligation to provide a guard against contact with any dangerous part of a machine and not an obligation to guard against dangerous materials or articles ejected from the machine in motion": per Lord Morton of Henryton in *Close v Steel Co of Wales* [1962] A.C. 367. To be secure enough to satisfy this section a fence must be sufficient not only to guard against accidents but also to deter anyone willing to run a risk and take a short cut (*Quintas v National Smelting Co* [1960] 1 W.L.R. 217).

The side entrance itself of a disused mine had to be "securely fenced" (Metalliferous Mines Regulation Act 1872 (c.77) s.13), whether on enclosed ground or not (*Foster v Owen*, 62 L.J.M.C. 7).

See SAFELY.

SECURING. "Securing an offer": see *Bennett, Walden & Co v Wood* [1950] 2 All E.R. 134.

SECURITIES. A bequest of "securities" meant "investments" and was not confined to secured investments but, while not being so extensive as to mean any property at all (such as jewellery), included investments within the range authorised by law and any stocks, shares or bonds by way of investment (*Re Douglas' Will Trusts, Lloyds Bank v Nelson* [1959] 1 W.L.R. 744).

"Effects and securities": see *Re David and Matthews* [1899] 1 Ch. 378, cited EFFECTS.

Stat. Def., "in relation to a company, includes shares, debentures, bonds, and other securities of the company, whether or not constituting a charge on the assets of the company" (Coal Industry Act 1994 (c.21) s.65(1)).

SECURITIES

Stat. Def., Crown Agents Act 1995 (c.24) s.14; Pensions Act 1995 (c.26) s.40(2); Atomic Energy Authority Act 1995 (c.37) s.13(1); Finance Act 1996 (c.8) s.186(2); Income and Corporation Taxes Act 1988 s.181A(t) as inserted by Finance Act 1996 (c.8) Sch.29 para.1.

Stat. Def., “shares, stock, debentures, debenture stock, loan stock, bonds, and other securities of any description” (Cash Ratio Deposits (Eligible Liabilities) Order 1998 (SI 1998/1130) art.2(1)); Bank of England (Information Powers) Order 1998 (SI 1998/1270) art.1(2).

Stat. Def., Banking Act 2009 s.14; Corporation Tax Act 2010 s.751.

See also OVERSEAS SECURITIES.

“Transaction in securities”. See *IRC v Parker* [1966] A.C. 141, cited TRANSACTION.

See also HERITABLE SECURITIES; GOVERNMENT SECURITIES; PUBLIC SECURITIES; REAL SECURITY; SECURITY; SECURITY FOR MONEY; STOCKS; ISSUE OF DEBENTURES. Cp. INVESTMENTS.

SECURITIES SETTLEMENT SYSTEM. Stat. Def., Financial Services (Banking Reform) Act 2013 s.113.

SECURITY. A “security”, speaking generally, is anything that makes the money more assured in its payment or more readily recoverable; as distinguished from, e.g., a mere IOU which is only evidence of a debt. See SECURITIES. See further, per Stirling L.J., *British Oil Mills Co v Inland Revenue Commissioners* [1903] 1 K.B. 697.

Thus, bank notes, bills of exchange, promissory notes, and cheques, are “securities” (Byles (29th edn)). See further *Brown v Inland Revenue Commissioners* [1895] 2 Q.B. 598, cited MARKETABLE SECURITY; SECURITY FOR MONEY; but see SECURITY FOR DEBT.

And writing is not necessary; for a parol deposit of deeds to secure a debt creates an equitable mortgage (Fisher and Lightwood; Coote (9th edn)), and is obviously a “security”.

Probably the more general meaning of “security” is money secured on property (per Farwell J.); but that has been termed “its narrow, archaic, meaning” (per Williams L.J.), yet still it is its *prima facie* meaning, though “a flexible one” (per Romer L.J.), and, semble, it will, somewhat easily, yield to a context; therefore, where a testator (being a man of large means and having many kinds of investments) directed “that the moneys liable to be invested under this my will may be invested in such securities as my trustees, in their absolute discretion, shall think fit, and I authorise my trustees to continue or leave any moneys invested at my death in or upon the same securities”; it was held that “securities” was used in the sense of investments, and that the trustees were authorised to invest in the purchase of the ordinary stock of the Midland Railway and of the London & North Western Railway (*Re Rayner* [1904] 1 Ch. 176; this case was applied in *Re Gent and Eason* [1905] 1 Ch. 386; see further *Re Tapp and London & India Docks Co*, 74 L.J. Ch. 523, cited VARY). Cp. *Re Mordan* [1905] 1 Ch. 515, cited INVEST. Cp. *Re Hutchinson*, 88 L.J. Ch. 352.

“Mortgage, pledge, charge, or other security” (Sale of Goods Act 1893 (c.71) s.61(4)): see *Rennett v Mathieson*, 40 Sc. L.R. 421; *Craighead v Fraser* (1920) S.C. 674.

A foreign attachment out of the Lord Mayor’s Court (*Levy v Lovell*, 14 Ch. D. 234), or an attachment in the Tolzey Court of Bristol (*Ex p. Sear*, 17 Ch. D. 74), gives no “security” for the debt sued for, the object of either process being merely to compel the appearance of the defendant.

Money paid into court to abide the event of an action is a security to the other litigant, who, if he succeeds, becomes thereby a secured creditor (*Ex p. Tate Re Keyworth*, 43 L.J. Bank. 102; nom. *Ex p. Banner Re Keyworth*, 9 Ch. 379; *Ex p. Bouchard Re Moojen*, 12 Ch. D. 26; *Re Ford* [1900] 2 Q.B. 211), even though there be a denial of liability by the payer (*Re Gordon* [1898] 2 Q.B. 516).

A verdict before judgment is probably not a "security" (*Jones v Thompson*, 27 L.J.Q.B. 234); but "a judgment is, in every sense of the word, a security to a creditor for payment of his claim" (per Kelly C.B., *West Ham v Owens*, L.R. 8 Ex. 37).

(Friendly Societies Act 1896 (c.25) s.44(1)(e).) Prima facie "security" must be confined to the stricter or more narrow significance of debts or money claims the payment of which is secured or guaranteed by a charge on some property or by some document recording the obligation of some person or corporation to pay (*Re United Law Clerks' Society* [1947] Ch. 150).

A power to borrow on "any security" of a company authorises a charge on uncalled capital (*Newton v Anglo-Australian Co* [1895] A.C. 244; see further PROPERTY).

"Security given by the borrower" (Moneylenders Act 1927 (c.21) s.6). A third party's guarantee provided by a borrower may be "security given by the borrower" (*Temperance Loan Fund, Ltd v Rose* [1932] 2 K.B. 522). Where a borrower offers the deposit of a third party's securities these are "securities" within the meaning of this section (*Barclay v Prospect Mortgages* [1974] 1 W.L.R. 837).

Landlord's security for rent in the liquidation of a company: see *Re Oak Pits Co*, 21 Ch. D. 322; *Re New Oriental Bank* [1895] 1 Ch. 753.

Loan "upon security of any lands" (Usury Act 1839 (c.37) s.1) did not comprise a warrant of attorney to enter up judgment for money borrowed, though when entered up the judgment would be a charge on land under s.13 of the Judgments Act 1837 (c.110) (*Lane v Horlock* 16 L.J.Q.B. 87).

To be a "security" within Sch.I of the Stamp Act 1891 (c.39) a document need not be a bond or a covenant. A written sale agreement could be enough (*IRC v Ansbacher & Co* [1963] A.C. 191). A collateral security could be covered by the Schedule even though what is secured is an executory obligation under the contract which is the primary security, and it matters not in what way the obligation is executory (*British-Italian Corporation v IRC* [1963] A.C. 211).

"Security" (s.1(1) of the Courts (Emergency Powers) Act 1914 (c.78)): see *Foster v Barnard* [1916] 1 K.B. 632.

(Gas Act 1948 (c.67) s.74(1).) A 4 per cent redeemable mortgage debenture repayable after 25 years and secured by a charge on the undertaking of a gas company and its present and future property is a "security" (*Pearl Assurance Co v West Midlands Gas Board* [1950] 2 All E.R. 844).

"Any security in respect of the debt" (Insolvency Rules 1986 (SI 1986/1925) r.6.1(5)) was to be construed as having the same meaning as in ss.383 and 385(1) of the Insolvency Act 1986 (c.45). Accordingly, the "security" that had to be referred to in the statutory demand served on a debtor by a bank was security "over any property of the person by whom the debt was owed" and therefore did not include the security of third persons (*Re a Debtor (No.310 of 1988)* [1989] 1 W.L.R. 452).

(Insolvency Act 1986 (c.45) s.383(2).) A landlord's right to peaceable re-entry for non-payment of rent was not a "security" for the purposes of s.383(2) (*Razzag v Pala* [1997] 1 W.L.R. 1336).

SECURITY

For a list of activities forming part of the security services industry see Sch.2 to the Private Security Industry Act 2001 (c.12).

Stat. Def., Taxation of Chargeable Gains Act 1992 (c.12) ss.104, 132; “means any mortgage, charge or other security” (Housing Act 1996 (c.52) s.39(2)); “shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme and other securities of any description” (Building Societies Act 1986 (c.53) s.9A(9) inserted by Building Societies Act 1997 (c.32) s.10).

Stat. Def., “means shares (including stock), debentures, bonds and other securities, whether constituting a charge on the assets of the company or not” (s.6(3) of the International Development Act 2002 (c.1)).

Stat. Def., “includes shares or stock, debentures or debenture stock, bonds and other securities of a company (whether or not constituting a charge on the assets of the company)” (s.1(2) of the Electricity (Miscellaneous Provisions) Act 2003 (c.9)).

Stat. Def., “‘securities’ in relation to a body corporate, includes shares, debentures, debenture stock, bonds and other securities of the body corporate, whether or not constituting a charge on the assets of the body corporate” (Energy Act 2004 (c.20) s.196).

Stat. Def., “includes—

- (a) a charge over a bank account or any other asset;
- (b) a deposit of money;
- (c) a performance bond or guarantee;
- (d) a letter of credit; and
- (e) a letter of comfort” (Energy Act 2004 (c.20) s.114).

“Debt on a security”: see DEBT.

See APPROVED SECURITIES; CHARGE; FURTHER SECURITY; GOOD SECURITY; HERITABLE; LIEN; MARKETABLE SECURITY; MERGER; MORTGAGE; NEGOTIABLE; PERSONAL SECURITY; REAL SECURITY; SECURED CREDITOR; SECURITY FOR MONEY; SUBSTITUTED; TRANSACTIONS IN SECURITIES; VALUABLE.

SECURITY FOR COSTS. “Security for costs”: see R.S.C. Ord.23.

SECURITY FOR DEBT. A building agreement which forfeits to the landlord the materials which may be brought on the land on breach by the builder of his obligations, is not a LICENCE to take possession of chattels as “security for any debt”, and therefore is not a bill of sale requiring registration under Bills of Sale Act 1878 (41 & 42 Vict., c.31) s.4 (*Brown v Bateman*, L.R. 2 C.P. 272; *Blake v Izard*, 16 W.R. 108; *Ex p. Newitt Re Garrud*, 16 Ch. D. 522; *Reeves v Barlow*, 11 Q.B.D. 610; 12 Q.B.D. 436). See hereon *Ex p. Jay Re Harrison*, 14 Ch. D. 19; *Re Yates Batcheldor v Yates*, 38 Ch. D. 112; *Climpson v Coles*, 23 Q.B.D. 465, cited LICENSE; AUTHORITY OR LICENSE. But see *Church v Sage*, 67 L.T. 800.

An assignment of “all book and other debts, and all securities for such debts”; held, not to pass an honoured cheque, uncashed at the date of the assignment, which had been given for a debt which, if unpaid, would have passed (*Hadley v Hadley* [1898] 2 Ch. 680, cited PAYMENT).

SECURITY FOR MONEY. Mortgages are “securities for money” (*Dicks v Lambert*, 4 Ves. 725; *Ogle v Knipe*, L.R. 8 Eq. 434). So, a bequest of “securities for money” will prima facie pass stock in the funds (*Bescoby v Pack*, 2 L.J.O.S. Ch. 17); but not bank stock (*Bescoby*; *Ogle v Knipe*, above, which case was considered in *Re Rayner* [1904] 1 Ch. 176, cited SECURITY, and *Re Hutchinson*, 88 L.J. Ch. 352, cited

SECURITIES; *Re Maitland*, 74 L.T. 274); nor shares in a company (*Hudleston v Gouldsbury*, 10 Bea. 547; *Re Maitland*, above; *M'Donnell v Morrow*, 23 L.R. Ir. 591; but see *Re Rayner*, above); nor an unpaid legacy (*Re Mason*, 34 L.J. Ch. 603). Such a bequest will pass a vendor's lien for unpaid purchase-money (*Callow v Callow*, 42 Ch. D. 550; but see *Gould v Teague*, 32 L.T.O.S. 251; but see this last case disapproved, Sug. V. & P. (14th edn) 684; Dart (6th edn), 827, fn.). So it will pass a life policy (*Lawrance v Galsworthy*, 3 Jur. N.S. 1049); also bonds (*Dicks v Lambert*, above; *Mainland v Upjohn*, 41 Ch. D. 142), and bills of exchange, promissory notes, and cheques (*Barry v Harding*, 1 J. & La. T. 475); but not bank notes, for they are money (*Southcot v Watson*, 3 Atk. 233). It would not pass money merely evidenced as due by an IOU (*Barry v Harding*, above); nor a sum shown to be due by a banker's deposit note (*Hopkins v Abbott*, L.R. 19 Eq. 222; cp. *Re Price* [1905] 2 Ch. 55, cited INVESTMENTS); still less a mere debt (*Re Mason*, 34 L.J. Ch. 603); but it would seem that money due on a judgment would pass (*West Ham v Ovens*, L.R. 8 Ex. 37). The phrase does not include insurance policy moneys (*Re Lilly's Will Trusts* [1948] 2 All E.R. 906). See hereon Wms. Exs. (13th edn), 631.

"Bond, covenant, or instrument", "being the only, or principal, or primary security" for money (Stamp Act 1891 (c.39) Sch.1): see INSTRUMENT; *United Realization Co v Inland Revenue Commissioners* [1899] 1 Q.B. 361.

In *Stirling v John* [1923] 1 K.B. 557, it was held that post-dated cheques given in repayments of a loan are "security for money" within the meaning of Moneylenders Act, there being nothing in the words of the Acts to confine the term "security" to a document which gives a charge on some property.

See MONEY; SECURITY.

SEDITION. Sedition is the attempt "to bring into hatred or contempt the person of" the reigning monarch, "or the Government and constitution of the United Kingdom as by law established, or either House of Parliament or the administration of justice, or to excite His Majesty's subjects to attempt otherwise than by lawful means the alteration of any matter in Church or State by law established" (Criminal Libel Act 1819 (60 Geo. 3 and 1 Geo. 4, c.8) s.1); "or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst His Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects" (Stephen Cr. (9th edn), 92). See hereon *R. v Lambert*, 2 Camp. 398; *R. v Vincent*, 9 C. & P. 91; Arch. Cr. (32nd edn) 1142 et seq.

SEDUCTION. Seduction of a wife gave rise at common law to the action for criminal conversation (3 Bl. Com. 139, 140); but that action was abolished by the Matrimonial Causes Act 1857 (c.85) s.59, and by s.33 a husband might, in a matrimonial cause, claim damages from an adulterer.

As to the sense in which the word "seduction" is used in s.17 of the Children Act 1908 (c.67), see *R. v Moon* [1910] 1 K.B. 818; *R. v Chainey* [1914] 1 K.B. 137.

Cp. ABDUCTION. See SERVANT.

SEE. See DIOCESE.

SEE BACK. "See back", on the face of a railway cloak room ticket and printed thereon in such a way as to give reasonably sufficient intimation that there are conditions on the back (which is a question for the jury), gives to the person taking it notice of the conditions on the back of it, under which the article is accepted for custody (*Parker v South Eastern Railway*, 2 C.P.D. 416); and it follows that a similar notification on any other ticket would charge the person taking it with notice of the

SEE

conditions on its back. But the “see back”, or “see over”, must not be in small type (per Wright J., *Great Northern Railway v Palmer* [1895] 1 Q.B. 862). The ticket must not be folded up so that the intimation is not visible unless the ticket is opened and read (*Richardson v Rowntree* [1894] A.C. 217). See further *Stirling v London & South Western Railway*, 12 T.L.R. 69; *Kent v Midland Railway*, L.R. 10 Q.B. 1.

SEE FIT. See THINK FIT.

SEED. See BLOOD.

SEEK. “Seek a livelihood”: see LIVELIHOOD.

“Seeks only”: see ONLY.

SEEM FIT. See THINK FIT.

SEEM MEET. A power to justices “to make such order thereon as to them shall seem meet” (Highway Act 1835 (c.50) s.44) did not authorise an order for illegal charges (*Barton v Piggott*, L.R. 10 Q.B. 86). See further THINK FIT.

SEGWAY. “Before going any further I should briefly explain what a SEGWAY is. It is a technologically advanced form of personal transportation consisting of a small gyroscopically stabilised platform mounted on two wheels, on which the traveller stands, powered by a battery driven electric motor. A vertical joy-stick is used to steer. Speed is controlled by leaning forward (to go faster) or standing up straight (to slow down). Its maximum speed is 1212 miles per hour. Mr Barnett points to its small footprint—smaller than a bicycle and little more than a walking individual. The SEGWAY is also, he stresses, low carbon and environmentally friendly.” (*Coates v Crown Prosecution Service* [2011] EWHC 2032 (Admin).)

SEIGNIOR. The lord of a manor: “seignior in grosse” “is a lord, but of no mannor, and therefore can keep no court”; “seignory”, a manor or lordship. See further Cowel/Gross.

SEISED. See FIRST SEISED.

SEIZE. Distinguished from detain: *Gora v Customs and Excise Commissioners* [2003] 3 W.L.R. 160, CA. See SEIZURE.

SEIZED. This word, in its relation to real estate, is “one of the most technical words in our law—a word that has no meaning except technical. It has not got into vernacular use that I am aware of” (per James L.J., *Leach v Jay*, 47 L.J. Ch. 877; see further *Kilwick v Maidman*, 1 Burr. 107).

“Seisin”, or *seison*, is common aswel to the English as to the French, and signifies in the common law possession, whereof *seisina* a Latin word is made, and *seisire*, a verbe” (Co. Litt. 153A); actual entry is, generally speaking, necessary to make a seizin (2 Bl. Com. 209; ENTITLED; Co. Litt. 29A, but see the exceptions there stated and Hargrave’s note thereon, also Co. Litt. 31A. See also Cowel, *Seisin*). Therefore, a devise of “all real estate of which I may die seized” will not pass real estate to which the testator is entitled, but of which he has not acquired the actual possession (*Leach v Jay*, 9 Ch. D. 42). See further *Re Huddleston* [1894] 3 Ch. 595; ACTUAL SEIZIN. See further *Parks v Hegan* [1903] 2 Ir. R. 643, in which case Barton J. said: “seizin’ is a mutable and elastic word, used sometimes in a general, and sometimes in a special, sense”; but, generally, “it involves the idea of actual, corporeal, possession and enjoyment (by the person in question, or some person on his or her behalf), as contrasted with mere right to possession”. In *Phillips v Phillips*, 31 L.J. Ch. 325, Westbury C. speaks of a person being “seized of an equitable estate”. See further PER MY ET PER TOUT.

But though "seized" is a strong technical expression and has its proper relation only to realty, yet if it be the only word relating to realty in a testamentary gift the other expressions of which relate to personalty, it will not be sufficient to pass realty (*Jones v Robinson*, 3 C.P.D. 344).

"Court other than the court first seised" (Civil Jurisdiction and Judgments Act 1982 (c.27) Sch.1 arts 21, 22). An English court is "seised" of proceedings for the purposes of this article on the day the issue of proceedings is served on a defendant (*Dresser UK v Falcongate Freight Management* [1992] 2 W.L.R. 319). For the purposes of art.21, English court became definitively seised of proceedings on the service of the writ (*Nestle Chemicals SA v DK Line SA*, *The Times*, April 4, 1994).

Covenant "to stand seised": see 4 Cru. Dig. 106–112.

See ENTITLED; SEIZIN; SEIZURE.

SEIZIN. "Instrument of seisin": see *Eglinton Trustees v Inland Revenue Commissioners* 34 L.J. Ex. 225. In that case Pollock C.B. said the Scotch equivalent for "seizin" is "sasine" (3 H. & C. 887).

The seisin of chattels: see 1 L.Q.R. 324. The mystery of seisin: 2 L.Q.R. 481. The beatitude of seisin: 4 L.Q.R. 24, 286.

See SEIZED; ACTUAL SEIZIN; PRIMER SEISIN; CAPTION.

SEIZURE. The ordinary and natural meaning of "seizure" is a forcible taking possession (per Cave J., *Johnston v Hogg*, 10 Q.B.D. 432. See also *Vinter v Hind*, 10 Q.B.D. 63; but see on this last case *Mallinson v Carr* [1891] 1 Q.B. 48, cited KNOWINGLY).

Seizure of part of the goods in the house by virtue of a fieri facias in the name of the whole is a good seizure of all (per Holt C.J., *Cole v Davis*, 1 Raym. Ld. 724. See also *Gladstone v Padwick*, L.R. 6 Ex. 203).

An execution against lands was "completed by seizure", within s.45(2) of the Bankruptcy Act 1883 (c.52), as soon as the sheriff had delivered the lands to the execution creditor (*Re Hobson*, 33 Ch. D. 493; see Act of 1914 (c.59) s.40(2); cp. DELIVERED IN EXECUTION).

In a warranty by owners of a ship against "capture and seizure", in a marine insurance, the word "seizure" has its ordinary and natural meaning and is not a term of art, and includes the forcible taking possession of a vessel and abandoning her as soon as the cargo has been plundered; "seizure" is not equivalent to, but is less exigent than, "capture", as the latter word involves the idea of keeping what has been seized (*Johnston v Hogg*, above, and dicta there cited). "Seizure", even in this connection, is not confined to a belligerent, hostile, or wrongful seizure (*Powell v Hyde*, 25 L.J.Q.B. 65; *Kleinwort v Shepard*, 28 L.J.Q.B. 147; *Cory v Burr* (1882–83) L.R. 8 App. Cas. 393). See further *Robinson Gold-Mining Co v Alliance Assurance* [1902] 2 K.B. 489, affirmed in HL [1904] A.C. 359; see also *Miller v Law Accident Insurance* [1903] 1 K.B. 712, cited RESTRAINTS OF KINGS; WAR; see also CAPTURE.

It has been said in America that a "capture" is a taking by military power; a "seizure" a taking by civil authority (*United States v Athens Armory*, 2 Abb. 137).

Quaere: whether the placing of an armed guard in a neutral ship in the course of the exercise of the Crown's belligerent right of visit and search constitutes a "seizure" (*The Mim* [1947] P. 115).

See ARREST; ACTUAL; EXECUTED; QUOUSQUE; SEIZED.

SELBORNE'S (LORD) ACT. Powers of Appointment Act 1874 (c.37).

See further PALMER ACT.

SELDA. Cowel gives these various meanings to “selda”: a seat or stool; a window; a shop, shed, or stall; and says that “selda, also in Doomsday signifies a wood of willows, willows, and withyes”. See further SALIVA.

SELECT. As to the right of a devisee or legatee to select which property he will take where the testator had more than one property answering the description of the gift, or more property of the kind described than the gift exhausts, see *Jacques v Chambers*, 2 Coll. 435; *Tapley v Eagleton*, 12 Ch. D. 683, criticising *Richardson v Watson*, 2 L.J.K.B. 134, cited CLOSE, and following *Duckmanton v Duckmanton*, 29 L.J. Ex. 132; *Re Cheadle* [1900] 2 Ch. 620, distinguishing *Tapley v Eagleton*, above, and approving *Asten v Asten* [1894] 3 Ch. 260; *O'Donnell v Welsh* [1903] 1 Ir. R. 115.

“A bequest for such charitable institutions and schemes . . . as the trustees may select”: see *Dick v Audsley* [1908] A.C. 347; see further *Re Garrard*, 92 L.T. 779, cited SUCCESSORS.

A bequest of such furniture, etc. in a certain house as the legatee should select was held to be unlimited as to quantum and to justify a claim to the whole of the furniture (*Re Wavertree* [1933] Ch. 837).

“Selected for dismissal”: see DISMISS; DISMISSAL.

“Power to select”: see RELATIONS.

Cp. ELECTION. See APPROPRIATE.

SELF. “Self defence”: see 3 Bl. Com. 3; 4 Bl. Com. 183; Steph. Cr. (9th edn) art.305. See also *R. v Julien* [1969] 1 W.L.R. 839; *Palmer (Sigismund) v R.* [1971] A.C. 814. “Son assault demesne”: see DEMESNE.

“For firm and self”: see FOR.

“Self murder”: see SUICIDE; 4 Bl. Com. 189.

SELF-BUILD SOCIETY. Stat. Def., Corporation Tax Act 2010 s.650.

SELF-CONTAINED. (Council Tax (Chargeable Dwellings) Order 1992 art.2.) The concept of “self-contained” unit in art.2 did not require any analysis of its future saleability. The terms of planning consent could be relevant when determining whether a granny-flat annex was a “self-contained unit”. However the level of community living was an irrelevant consideration (*Batty v Burfoot* [1995] 2 E.G.L.R. 142).

In relation to building: Stat. Def., “structurally detached” (s.72(2) of the Commonhold and Leasehold Reform Act 2002 (c.15)). As to self-contained part of building, s.72(3) of the 2002 Act.

SELF-EMPLOYED. “Self-employed persons” (EEC Regulation No.1408/71 art.1(a)(iv), as amended by Regulation No.1390/81). A missionary priest who was supported as to his daily needs by contributions from his parishioners remained a “self-employed” person for the purposes of this article, notwithstanding that his parishioners were the beneficiaries of the service he provided (*Van Roosmalen v Bestuur van de Bedrijfsvereniging voor de Gezondheid* (No.300/84) [1988] 3 C.M.L.R. 471).

“Self-employed” (Conduct of Employment Agencies and Employment Businesses Regulations 1976 (SI 1976/715)). A person engaged by an employment agency as a contract worker for another company was “self-employed” for the purposes of these regulations (*Ironmonger v Morefield t/a Appointments* [1988] I.R.L.R. 461).

A freelance vision mixer who worked for 20 companies on short-term contracts lasting one or two days and who was registered for VAT was “self-employed” for the purposes of assessment to income tax (*Hall (Inspector of Taxes) v Lorimer*, *The Times*, November 18, 1993).

SELION. “By the grant of a selion of land, *selio terræ*, a ridge of land which containeth no certainty, for some be greater and some be lesser; and by the grant *de unâ porcâ*, a ridge doth passe. *Selio* is derived of the French word *sellon*, for a ridge” (Co. Litt. 5B; see also *Termes de la Ley*; Cowel). See *PORCA TERRÆ*; BUTT.

SELL. Stat. Def., “includes offer or expose for sale and includes have in possession for sale” (Bread and Flour Regulations 1998 (SI 1998/141) reg.2(1)).

See *ASSIGN*; *ATTEMPT*; *CONVEY*; *MORTGAGE*; *PARTITION*; *SALE*; *SELLER*; *VEND*.

“Sells . . . any food” (Food and Drug Act 1955 (c.16) ss.2(1), 8(1) (a)): see *FOOD*.

SELLER. “A man cannot be both buyer and seller, or lessor and lessee” (per Farwell J., *Boyce v Edbrooke* [1903] 1 Ch. 843). See *SALE*.

“Buyer and seller” (Customs and Excise Act 1952 (c.44) Sch.6 para.1). These are national persons with no personal characteristics or attributes, except a deemed desire by the seller to take the goods into the open market and there sell them for the highest price obtainable (*Salomon v Commissioners of Customs and Excise* [1966] 3 W.L.R. 36).

(Factors Act 1889 (c.45) s.9.) Although, for the purposes of this section, the “seller” of the goods does not have to be the owner, a person whose possession of goods was derived from the unlawful possession of a thief cannot pass a good title as a “seller” under this section (*National Employers Mutual General Insurance Association v Jones* [1987] 3 All E.R. 385).

Stat. Def., Hire-Purchase Act 1964 (c.53) Sch.1 para.6; Hire-Purchase Act 1965 (c.66) s.58; Sale of Goods Act 1979 (c.54) ss.38(2), 61.

“I am conscious that the FTT held in the alternative that the term ‘seller’ in art.29(3)(a) [of Council Regulation (EEC) No 2913/92] should be construed as applying separately to the hanger suppliers (in relation to the hangers) and to the clothing suppliers (in relation to the clothing). It did so in order to avoid what it thought would be an ‘arbitrary or fictitious customs value’. In my judgment, this approach was not open to the FTT. The word ‘seller’ in art.29(3)(a) of the Code is a clear unambiguous term understood by commercial men in the UK and across the world. It cannot be salami sliced in the way the FTT suggested. The seller of a consignment of goods is the person selling those goods to the buyer. In this situation, there were three separate transactions which ought not to be elided or confused: (a) the sale of the clothing and the hangers by the clothing supplier to Asda, (b) the sale of the hangers by the hanger suppliers to the clothing supplier, and (c) the agreement between Asda and the hanger suppliers whereby they rebate to Asda a part of the purchase price of the hangers paid to them by the clothing supplier. The transactions may be inter-related, but transaction (b) is clearly a free-standing purchase by the clothing supplier before the goods are either sold to Asda or imported into the customs territory of the EU.” (*Asda Stores Ltd v The Commissioners for Her Majesty’s Revenue And Customs* [2014] EWCA Civ 317.)

Cp. *VENDOR*.

SELLER OR SUPPLIER. A local authority is a seller or supplier in granting tenancies for rent, despite the fact that it did so in pursuance of statutory functions, for the purpose of Council Directive 93/13/EEC. By the same token, the tenant is a consumer (*R. (Khatun) v Newham LBC* [2004] 3 W.L.R. 417, CA).

SELLING. Selling price (Housing, etc. Act 1923 (c.24) s.2) “means the maximum price at which the builder who has erected the house with the subsidy . . . will be

entitled to sell the house" (per Maugham J., in *Burnham-on-Sea Urban DC v Channing & Osmond* [1933] Ch. 583, 589).

"Selling by retail"; "selling by wholesale": Stat. Def., Purchase Tax Act 1963 (c.9) s.40(1).

SELWYN'S ACT. Probate Duty Act 1859 (22 & 23 Vict., c.36).

SEMBLE. It seems.

SEMI-NATURAL AREA. For the meaning of "semi-natural area" in Sch.2 para.1(a) of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999, see *R. (on the application of Wye Valley Action Association Ltd) v Herefordshire Council* [2010] Env. L.R. 18 Q.B.D.

SEND. "A threatening letter is 'sent' when it is dropped in the way of the person for whom it is destined, so that he may pick it up (*R. v Jepson*, *R. v Lloyd* 2 East P.C. 1115, 1122; *R. v Wagstaff* Russ. & Ry. 398); or is affixed in some place where he would be likely to see it (*R. v Williams* 1 Cox C.C. 16); or is placed on a public road near his house, so that it may, however indirectly, reach him, which it eventually does after passing through several hands (*R. v Grimwade* 1 Den. 30; see also *R. v Jones* 5 Cox C.C. 226); although in none of these cases would the paper be popularly said to have been 'sent'" (Maxwell (10th edn), 278). But to "send" a threatening letter within the Black Act did not include its being taken by the writer (*R. v Hammond*, Leach, 444).

Notices of chargeability or of appeal were authorised to be sent "by post or otherwise" (Poor Law (Amendment) Acts 1834 (c.76) s.79, and 1851 (c.105) s.10); they were, accordingly, "sent", within s.9 of the Poor Law Procedure Act 1848 (c.31), on the day when in the ordinary course of post they ought to have been delivered (*R. v Slawstone*, 18 Q.B. 388; *R. v Richmond*, 27 L.J.M.C. 197).

"Send or cause to be sent" (Betting and Loans (Infants) Act 1892 (c.4) s.2; Moneylenders Act 1900 (c.51) s.5): see *Director of Public Prosecutions v Witkowski*, 22 Cox C.C. 425. See Moneylenders Act 1927 (c.21) s.5.

"Send out, deliver, remove, or receive" spirits exceeding the quantity of one gallon without a permit (Spirits Act 1880 (c.24) ss.105, 107): see *Leese v Jennings*, 79 L.T. 300.

"Sending" does not involve receipt (per Lord Uthwatt, *Tankexpress A/S v Compagnie Financiere Belges des Petroles SA* [1949] A.C. 76).

"Sent to the purchaser within seven days", in s.20(1) of the Sale of Food and Drugs Act 1899 (c.51), meant posted within that period, although the communication might not reach the sendee until the seven days had expired: see *Retail Dairy Co v Clarke* [1912] 2 K.B. 388.

A notice of prosecution was "sent" within s.21 of the Road Traffic Act 1930 (c.43) in the proper time, even if it was not received within the time limit (*Stanley v Thomas* [1939] 2 K.B. 462).

A second statutory copy of a hire-purchase agreement is "sent" within the meaning of s.10(2) of the Hire-Purchase Act 1965 (c.66) if it is just handed over (*Skuce (V.L.) v Cooper* [1975] 1 W.L.R. 593).

The "sending" of a writ by post for the purposes of service under R.S.C. Ord.81 r.3(1)(c) does not refer merely to the initial dispatch of the writ but connotes the whole process of dispatch, transmission and delivery to the receiver (*Austin Rover Group v Crouch Butler Associates* [1986] 1 W.L.R. 1102).

“Send” (Industrial Tribunal (Rules of Procedure) Regulations 1985 (SI 1985/16) Sch.1 r.5). A notice of hearing is “sent” under this rule when it is received or deemed to have been received. “Send” here does not refer to the date of posting (*Derrybaa v Castro-Blanco* [1986] I.C.R. 546).

“Sent by post” (Immigration Appeals (Notices) Regulations 1972 (No.1683) reg.6) means dispatched by post and not “received” (*R. v Secretary of State for the Home Department, Ex p. Yeboah* [1987] 3 All E.R. 999).

Stat. Def., Unsolicited Goods and Services Act 1971 (c.30) s.6.

“Sender”: Stat. Def., Unsolicited Goods and Services Act 1971 (c.30) ss.1(6).

In the Employment Appeal Tribunal Rules 1993, “date sent” means the date on which the document is sent out and not the date on which it is received or deemed to have been received (*Chelminski v Gdynia American Shipping Lines (London) Ltd* [2004] EWCA Civ 871).

SENIOR JUDGE. Stat. Def., Constitutional Reform Act 2005 (c.4) ss.60 and 109.

SENIOR MINISTER OF THE CROWN. Stat. Def., “means—

- (a) the First Lord of the Treasury (the Prime Minister),
- (b) any of Her Majesty’s Principal Secretaries of State, and
- (c) the Commissioners of Her Majesty’s Treasury” (Civil Contingencies Act 2004 (c.36) s.20).

SENSITIVE NUCLEAR INFORMATION. Stat. Def., s.77(7) of the Anti-terrorism, Crime and Security Act 2001 (c.24).

SENSITIVE PERSONAL DATA. See PERSONAL DATA.

SENT. For a context in which the court was reluctantly compelled to decline to construe a reference to a period of time running from sending a document as a reference to commencement on receipt, see *Bone v Fabcon Projects*, Unreported July 7, 2006, EAT.

SENTENCE. A covenant in a charterparty to employ a captured ship “as soon as sentence of condemnation shall have passed”, connotes that the sentence must be a legal one (*Unwin v Wolseley*, 1 T.R. 674).

“Sentence” is defined in Criminal Appeal Act 1907 (c.23) s.21 (as amended by Criminal Justice Act 1967 (c.80) Sch.4 para.8): on which see *R. v Jones* [1929] 1 K.B. 211. It includes any order of the court made on conviction; it does not include a sentence of imprisonment for failure to surrender on bail (*R. v Harman* [1959] 2 Q.B. 134).

“Serving a sentence of imprisonment” (Criminal Justice Act 1961 (c.39) s.3(1)). A person who has been released from prison on parole was held still to be “serving a sentence of imprisonment” within the meaning of this section (*R. v Mellor* [1981] 1 W.L.R. 1044). But this case was not followed in *R. v Orpwood* [1981] 1 W.L.R. 1048 where it was held that a young person released on licence is not “serving a sentence of imprisonment”.

“Sentence of imprisonment” (Criminal Justice Act 1967 (c.80) s.37(4)(c)(ii)) does not include a sentence of corrective training (*R. v Newton* [1973] 1 W.L.R. 233).

“Sentence” (Criminal Appeal Act 1968 (c.19) ss.9, 50(1) as amended by Criminal Justice Act 1982 (c.48) s.66). A probation order is a “sentence” within the meaning of this section (*R. v Tucker* [1974] 1 W.L.R. 615). An order to pay part or all of the prosecution costs made after conviction is also a “sentence” against which appeal may be made to the Court of Appeal (*R. v Hayden* [1975] 1 W.L.R. 852). The term

“sentence” in these sections means an order passed on an offender for an offence which that offender has committed (*R. v Ioannou* [1975] 1 W.L.R. 1297). An order revoking a parole licence is a “sentence” for the purpose of s.9 (*R. v Welch* [1982] 1 W.L.R. 976), as also is an order for binding over contingent on a conviction (*R. v Williams (Carl)* [1982] 1 W.L.R. 1398). A criminal bankruptcy order is a “sentence” for the purposes of the 1968 Act (*R. v Cain* [1984] 3 W.L.R. 393).

An order for forfeiture of money or goods under s.27 of the Misuse of Drugs Act 1971 (c.38) is a “sentence” within the meaning of s.57 of the Courts Act 1971 (c.23), and it cannot be imposed after the period specified in s.11(2) (*R. v Menocal* [1979] 2 W.L.R. 876).

Stat. Def., Criminal Appeal Act 1907 (c.23) s.21 as amended by Criminal Justice Act 1967 (c.80) Sch.4 para.8; Criminal Justice Act 1967 (c.80) s.74(12); Criminal Appeal Act 1968 (c.19) s.50 as amended by the Criminal Justice Act 1982 (c.48) s.66; Courts Act 1971 (c.23) s.57; Immigration Act 1971 (c.77) s.7(4); Criminal Justice Act 1972 (c.71) s.66(2); Costs in Criminal Cases Act 1973 (c.14) s.3(7); Rehabilitation of Offenders Act 1974 (c.53) s.1; Magistrates’ Courts Act 1980 (c.43) ss.108, 150; Supreme Court Act 1981 (c.54) ss.47, 48.

“May appeal... against any sentence” (Criminal Appeal Act 1968 (c.19) s.9). A confiscation order made on the conviction of the accused of possessing prohibited drugs with intent to supply was an order made on sentence, and could therefore be treated as part of the “sentence” for the purposes of this section, and therefore the subject of an appeal (*R. v Johnson* [1990] 3 W.L.R. 745).

“Deferred sentence” (Criminal Appeal Act 1968 (c.19) s.50(1); Criminal Justice Act 1988 (c.33) ss.35(6), 36). A deferred sentence was a sentence for the purposes of appeal (*Att-Gen’s Reference (No.22 of 1992)* [1994] 1 All E.R. 105).

(Criminal Justice Act 1967 (c.80) ss.67 and 102.) The expression “sentence of imprisonment” in s.67(1) was like the expression “term of imprisonment” in s.104(2) and to be construed as referring to the aggregate of any consecutive sentences imposed at the same trial, so that any period spent on remand should be deducted from the total sentence and not from each consecutive sentence (*R. v Secretary of State for the Home Department, Ex p. Naughton* [1997] 1 All E.R. 426).

(Criminal Justice Act 1967 (c.80) s.67 and Criminal Justice Act 1991 (c.53) s.33.) The relevant sentence for determining whether an individual is a long-term or short-term prisoner under s.33(1) of the 1991 Act is the sentence imposed by the court and not the sentence as reduced by time spent on remand (*R. v Secretary of State for the Home Department, Ex p. Probyn* [1998] 1 All E.R. 357).

(Rehabilitation of Offenders Act 1974 (c.53) s.5(8).) An endorsement of a driving licence was not a “sentence” within the meaning of s.5(8) (*Power v Provincial Insurance Plc* [1998] R.T.R. 61).

A reference to a “sentence” in the United States of America (Extradition) Order 1976 was capable of including a reference to penalties imposed in addition to the custodial element of a sentence (*Re Burke* [2000] 3 All E.R. 481, HL).

An order under s.116 of the Powers of Criminal Courts (Sentencing) Act 2000 (order to return to serve remainder of original sentence) is not a sentence (*R. v Matthews* [2002] 1 W.L.R. 2578, CA).

“Sentence of imprisonment”: Stat. Def., excluding certain committals, s.163 of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6); s.80(7) of the Terrorism Act 2000 (c.11).

A financial reporting order under s.76 of the Serious Organised Crime and Police Act 2005 is a sentence for the purposes of s.9(1) of the Criminal Appeal Act 1968 (*R. v Adams* [2008] EWCA Crim 914).

“If a ‘sentence’ is defined broadly as ‘any order made by a court when dealing with an offender’ on conviction, it would seem to follow that a refusal to make an order on an application to vary is an ‘Order made by a court when dealing with an offender’. Whether it is an order contingent on conviction might seem to be more questionable, but the Court of Appeal in *Hayden* seems to have intended to exclude orders which would be made whether or not the defendant was convicted: for example, an order that the defendant contribute to his own legal aid costs.” (*R. v Hoath* [2011] EWCA Crim 274.)

Stat. Def., Coroners and Justice Act 2009 s.136.

See DEFINITIVE.

SENTENCED. “The issue before the court is whether, by reason of the extended sentence of 412 years with a custodial term of 18 months, the claimant was ‘sentenced to imprisonment for a term of 30 months or more’, so as to be subject to the notification requirements for an indefinite period, or was ‘sentenced to imprisonment for a term of more than 6 months but less than 30 months’, so as to be subject to the requirements for a period of 10 years. . . . In my view, the extended sentence of 412 years imposed on the claimant under s.85 of the PCC(S)A 2000 is a sentence of imprisonment the term of which is 412 years and the claimant is therefore a person ‘sentenced . . . to imprisonment for a term of 30 months or more’ within the meaning of s.82(1) of the SOA 2003, so as to be subject to the notification requirements for an indefinite period. That is the conclusion I would reach independently of authority but it is also the conclusion required by the decision in *R v Wiles*, by which this court is bound.” (*R. (on the application of Minter) v Chief Constable of Hampshire Constabulary* [2011] EWHC 1610 (Admin).)

See CONVICTED.

SENTENCING GUIDELINES. Stat. Def., Coroners and Justice Act 2009 s.120.

SENTICETUM. See RONCARIA.

SEPARATE. The condition of an annuity in a separation deed provided that the annuity be payable during the joint lives of the husband and wife so long as they should “live separate”; held, that an occasional cohabitation was not a breach of such latter part of the condition; to do that the evidence must show a joint intention of continuing to live together (*Robinson v Robinson*, 89 L.T. 119; *Rowell v Rowell* [1900] 1 Q.B. 9).

Without such a condition, a real resumption of cohabitation may put an end to a separation deed, but not destroy a cause of action already accrued thereunder (*Macan v Macan*, 70 L.J.K.B. 90; cp. *Williams v Williams* [1904] P. 145, cited COHABITATION). The death of the husband puts an end to an annuity which he has covenanted to pay his wife so long as she continued “to live separate and apart” from him, for “she cannot be said to be doing that when he is dead” (per Kekewich J., *Re Gilling*, 74 L.J. Ch. 335, distinguishing *Charlesworth v Holt*, L.R. 9 Ex. 38). Cp. *Re Spark* [1904] 1 Ch. 451, cited SEPARATION. See also *Hyman v Hyman* [1929] A.C. 601; *May v May* [1929] W.N. 180.

SEPARATE

An agreement by a husband to maintain his wife during their joint lives "if they shall so long live separate" is not a bar to a petition on the grounds of desertion as being an agreement by the wife that the husband shall live apart from her (*Crabtree v Crabtree* [1953] 1 W.L.R. 708).

"Living apart": see *Nugent-Head v Jacob* [1948] A.C. 321, cited LIVING WITH.

See LET AS A SEPARATE DWELLING; LIVING APART; NEGLECT; SEPARATELY; cp. ASSOCIATE.

SEPARATE CHARGE. (Supplementary Benefit (Requirements) Regulations 1983 (SI 1983/1399), reg.9(4A), introduced by the amendment in para.2 of the Supplementary Benefit (Requirements and Resources) Amendment and Up-rating Regulations 1987 (SI 1987/659).) Where, under the terms of reg.9(4A), in addition to the weekly amount for board and lodging in a nursing or residential care home, a "separate charge" is made for additional services, "separate charge" is restricted to one made by those providing the board and lodging. It could not be one made by a third party (*Pearce v Chief Adjudication Officer, The Times*, May 10, 1990).

SEPARATE COVENANT. Where A covenants with B "and as a separate covenant" with C to do or refrain from doing a certain thing, "separate" is a technical word equivalent to the technical word "several", and clearly connotes a several obligation (*Keightley v Watson*, 3 Ex. 716, 720, 721); but, semble, "as a distinct covenant" is not such a technical phrase (*Hopkinson v Lee*, 6 Q.B. 964; but see this last case considered in *Keightley v Watson*).

See COVENANT; JOINTLY AND SEVERALLY; SEVERAL COVENANT.

SEPARATE DWELLING. "The use of the words 'let as a separate dwelling' in s.12(2) [of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17)] shows that some tenants of dwellings are to be protected and others not... If a dividing line is to be drawn one would expect it to exclude tenants who have a right to the daily use of a living room simultaneously with members of another household, and I think that the words 'let as a separate dwelling' do clearly exclude such tenants" (per Lord Reid, *Goodrich v Paisner* [1957] A.C. 65).

Where premises consisting of a basement, a shop and living accommodation above with a separate door from the street were let under a single lease, they were let as a "separate dwelling" within the meaning of s.16(1) of the Rent and Mortgage Interest (Restrictions) Act 1933 (c.32) (*Levermore v Jobey* [1956] 1 W.L.R. 697). But a single room, even if let under a separate agreement to the tenant of a flat across the corridor, cannot be a "separate dwelling" within the meaning of the section (*Metropolitan Properties v Barder* [1968] 1 W.L.R. 286).

"Separate dwelling-houses" (Town and Country Planning Act 1962 (c.38) s.12(3)) must be completely separate and self contained, and multiple occupation by different families is not of itself enough (*Ealing Corp v Ryan* [1965] 2 Q.B. 486).

Where at the end of a long lease of a house an assignee is in occupation of part, with the remainder empty, he is protected by Pt I of the Landlord and Tenant Act 1954 (c.56) as a "separate dwelling" within the meaning of s.22(3) (*Haines v Herbert* [1963] 1 W.L.R. 1401). But not if the rest is sublet (*Crown Lodge (Surbiton) Investments v Nalecz* [1967] 1 W.L.R. 647).

"Let as a separate dwelling" (Rent Act 1977 (c.42) s.1). Where 39 days before the expiry of the headlease of a block of flats, the tenant sub-let the basement to the appellant for a term of three years at a rent of £2,400 p.a., it was held that the basement

had not been let to the appellant as a “separate dwelling” within the meaning of this section (*Grosvenor Estate Belgravia v Cochran* [1991] 44 E.G. 169).

“Let as a separate dwelling” (Housing Act 1985 (c.68) s.79). Accommodation comprising a bedroom, small bathroom and shared kitchen in a hostel managed by a registered housing association which provided various services, including bed linen, towels, hot water and central heating, was not let as a “separate dwelling” within the meaning of this section (*Central YMCA Housing Association v Saunders* (1990) 23 H.L.R. 212). A furnished bedroom with its own bathroom and W.C., but with no cooking facilities, in a hostel run by the local authority was not “let as a separate dwelling” (*Central YMCA Housing Association v Goodman* (1991) 24 H.L.R. 98).

SEPARATE ESTATE. See SEPARATE PROPERTY; SEPARATE USE.

SEPARATE FACTORY. (Factories Act 1937 (c.67) s.151(6), Factories Act 1961 (c.34) s.175(4).) Work done in an engineering shop where margarine-making machinery is tested is incidental to the manufacture of margarine so that the shop is not a “separate factory” (*Thurogood v Van den Berghs and Jurgens* [1951] 2 K.B. 537).

SEPARATE FARES. A vehicle carrying passengers and their goods, each passenger paying an inclusive fare for himself and his goods, was “a vehicle carrying passengers for hire or reward at separate fares” within s.61(1)(b) of the Road Traffic Act 1930 (c.43), and was therefore an “express vehicle” (*Drew v Dingle* [1934] 1 K.B. 187).

The owner of a minibus, who contracts with another person to take, on a daily basis, her and her friends home from work at a fixed charge regardless of numbers, is guilty of carrying passengers “at separate fares” within the meaning of s.118(3)(b) of the Road Traffic Act 1960 (c.16), even though it is the hirer who collects and retains the individual fares (*Wurzel v Addison* [1965] 2 Q.B. 131).

SEPARATE FLATS. See SEPARATE DWELLING.

SEPARATE HEREDITAMENT. See HEREDITAMENT.

SEPARATE HOUSES. See SEPARATE DWELLING.

SEPARATE INSURANCE. “Each craft to be deemed a separate insurance”: see *South British Insurance v Da Costa* [1906] 1 K.B. 459, cited EXCESS.

SEPARATE MEETING. A meeting may be a “separate meeting” of a class notwithstanding that members of another class are present, provided they do not vote (*Carruther v Imperial Chemical Industries Ltd* [1937] A.C. 707).

SEPARATE OCCUPATION. Separate occupation, entitling a person to be separately rated, depends on his occupation, and has nothing to do with structural division (*Allchurch v Hendon* [1891] 2 Q.B. 436). In that case, Esher M.R. said, “‘structural division’ is a phrase invented by the judges at a time when, in the statute of Elizabeth as to the poor rate and in the Franchise Acts, they were labouring to determine what was to be an occupation which (in one case) would give a liability to be rated and (in the other) the right to the franchise. The phrase was in use for a long time”, but now “is an exploded phrase and an exploded doctrine for all purposes whatever”. See HOUSE; OCCUPATION.

SEPARATE PROCEEDINGS. See PROCEEDINGS.

SEPARATE PUBLICATION. See SEPARATELY; PUBLICATION.

SEPARATE USE. A “separate use” was the creation of courts of equity; it was applicable to both real and personal property; its effect was to give a married woman, with respect to the property subject to it, “an independent personal status, and to make

SEPARATELY

her, in equity, a *feme sole*" (see FEME). It was of the essence of the separate use, that the married woman was independent of, and free from the control and interference of, her husband. Like the concept of "separate property" which was embodied in the Married Women's Property Act 1870 (c.93) the need to protect a wife's property from her husband and empower her to deal with it independently has been removed by the legal emancipation of women during the twentieth century.

SEPARATELY. A wife might engage in or carry on an employment, trade, or occupation, "separately from her husband" (Married Women's Property Act 1882 (c.75) s.2), in the house in which they were living together; "separately" in that connection did not mean "bodily separate" but meant without the husband's interference (*Ashworth v Outram*, 5 Ch. D. 923; *Lovel v Newton*, 4 C.P.D. 7; *Re Dearmer*, 53 L.T. 905; as to proof, see *Re Whittaker*, 21 Ch. D. 657). So, in order to render a wife subject to the bankruptcy laws (1882 Act s.1(5)), she had not only to have separate estate but also "carry on a trade separately from her husband", i.e. her trade had to be one in which the husband had no share or right of interference (*Re Helsby*, 63 L.J.Q.B. 261); but "separately" did not mean that the husband might not help (and help very much) in carrying on the wife's trade (*Re Edwards*, 11 T.L.R. 338). It was not carrying on a "trade" within this enactment for a woman to let rooms in her house, she supplying no food to such lodgers (*Re Parkinson*, 9 T.L.R. 388). See CARRY ON.

"Separately assigned or charged" (Bills of Sale Act 1878 (c.31) s.7). See thereon *Re Yates*, *Batcheldor v Yates*, 38 Ch. D. 112; *Small v National Provincial Bank* [1894] 1 Ch. 686; *Re Brooke* [1894] 2 Ch. 600. A mortgage, whether of freeholds or leaseholds, which comprises fixtures and which gives the mortgagee power to sell fixtures separately from the land, amounts to a bill of sale as regards the fixtures (*Johns v Ware* [1899] 1 Ch. 359; *Re Yates*, above).

Lodgings occupied "separately and as sole tenant" (Representation of the People Acts). If a man's wife lodged with him, he nonetheless occupied "separately and as sole tenant" (*Hamilton v Paton* [1899] W.N. 175).

Book "separately published" (Copyright Act 1842 (c.45) s.2) included each one of a series of literacy compositions, clearly distinguishable from one another, although published in one volume and under one general title (*Johnson v Newnes* [1894] 3 Ch. 663, on which see *Lawrence & Bullen v Aflalo* [1940] A.C. 17). As to what was publishing an essay, etc. "separately or singly", within 1842 Act s.18, see *Mayhew v Maxwell*, 1 J. & H. 312; see that case and hereon, *Cox v Land & Water Co*, L.R. 9 Eq. 329, 300; see further *Smith v Johnson*, 33 L.J. Ch. 137; PERIODICAL; PUBLICATION.

Apartments "not separately rated" (Representation of the People Act 1867 (c.102) s.7): see *White v Islington* [1909] 1 K.B. 133, cited OWNER.

See SEPARATE; SEPARATE DWELLING-HOUSE; SEPARATE OCCUPATION.

SEPARATION. "Separation of the crop": see *Black v Clay* [1894] A.C. 368, cited DETERMINATION.

"Allowance during separation": see DURING.

"Separation deed": see ALIMONY; COMMENCED; CONDONATION; USUAL.

See JUDICIAL SEPARATION; LIVING APART; SEPARATE; cp. ASSOCIATE.

SEPARATION ORDER. For civil partnership: Stat. Def., Civil Partnership Act 2004 (c.33) s.37.

SEPTUM. “An inclosure, a close; and is so called because it is encompassed *cum sepe et fossa*, with a hedge and a ditch, or, at least, with a hedge” (Cowel); “it signifies any place paled in” (Jacob).

SEPULCHRE. “Sepulture ecclesiastique”: see *Brown v Montreal Curé*, L.R. 6 P.C. 157.

SEQUELAE. “Sequelae”, in Sch.3 to ss.43–46 of the Workmen’s Compensation Act 1925 (15 & 16 Geo. 5, c.84), e.g. “lead poisoning or its sequelae” means a disease which is the consequence—not a possible consequence but the result—of lead poisoning; and if the proof is that the disease might have resulted from lead poisoning, or might have resulted from something else, then a claim under s.8 fails: see *Haylett v Vigor*, 77 L.J.K.B. 1132.

SEQUESTRATION. “‘Sequestration’ is the setting aside of a thing in controversie from the possession of both those that contend for it” (Termes de la Ley); it is voluntary, when both parties consent; necessary, when ordered by a judge (Cowel).

The sequestration of a benefice “is this, that the proceeds of the benefice are taken by an officer appointed by the bishop for the purpose: but, in other respects, the position of the incumbent, except so far as it may be expressly altered by the statute, remains the same” (per Chitty J., *Lawrence v Edwards* [1891] 1 Ch. 144, cited MINISTER). See further as to the effect of a sequestration of a benefice, *Re Lawrence* [1896] P. 244; *Lawrence v Adams*, 75 L.T. 410; *Pack v Tarpley*, 8 L.J.M.C. 93; Phil. Ecc. Law (2nd edn) 1003–1012, 1074.

“‘Sequestration’ is a word large enough to apply to all sequestrations” (per North J., *Re Wanzer*, 60 L.J. Ch. 494); and as used in s.163 of the Companies Act 1862 (c.89), included a Scottish proceedings in sequestration by a landlord against a tenant for future rent (*Re Wanzer* [1891] 1 Ch. 305). An arrest of a vessel by the Admiralty Court was also a “sequestration” within that section (*Re Australian Navigation Co*, L.R. 20 Eq. 325). See Companies Act 1948 (c.38) s.228.

Sequestration to enforce payment into court or other act: see R.S.C. Ord.43 rr.6, 7, now Ord.45 r.1, see further *Re Pollard* [1903] 2 K.B. 41.

“Sequestrator”: see CREDITOR.

SERIAL. See *Johnson v Newnes* [1894] 3 Ch. 663, cited SEPARATELY; PERIODICAL.

SERIES. “Series of debentures containing any charge”, in s.14(4) of the Companies Act 1900 (c.48) (see Companies Act 1948 (c.38) s.95(8)), included debenture stock the certificates for which did not themselves contain any charge but which had the benefit of a charge given by a covering deed: see *Cunard SS Co v Hopwood* [1908] 2 Ch. 564. See also DEBENTURE; MORTGAGE OR CHARGE; CREATE.

(Finance (1909–10) Act 1910 (c.8) s.73.) The purchase, by one purchaser at an auction sale, of several lots in the same street belonging to the same vendor did not form part of a “series of transactions” (*Att-Gen v Cohen* [1937] 1 K.B. 478).

“Series of similar actions” (Employment Protection (Consolidation) Act 1978 (c.44) s.24(2)). Weekly payments showing a variation in pay between union and non-union employees were held not to be a “series of similar actions”, but a continuation of the first one which established the differential (*Adlam v Salisbury and Wells Theological College* [1985] I.C.R. 786).

“Series of two or more offences” (Magistrates’ Courts Act 1980 (c.43) s.22(1)). Where, of the three preferred charges which subsisted at the time of the appellant’s

election for trial, two were dropped before committal, the third was held not to form part of a “series” within the meaning of this section (*R. v Braden* [1988] Crim.L.R. 54).

“Series of offences of the same or a similar character” (Indictment Rules 1971 (SI 1971/1253) r.9). Where the alleged offences (in this case indecent assault on a boy) were linked by a sufficiently close nexus it was held that two offences only, and spaced nine years apart, could form a “series” for the purposes of this rule (*R. v Baird* (1993) 97 Cr.App.R. 308).

“Series of like or similar events” (Value Added Tax Act 1983 (c.55) Sch.6). Seven performances in a week of a play put on as a fund-raising event was held to be a “series” for the purposes of this Schedule and so did not qualify for VAT exemption (*Northern Ireland Council for Voluntary Action v Customs and Excise Commissioners* (1991) 1 V.A.T.T.R. 32).

A “series” of films requires a link of substance, common elements relating to content, between the films (*RTL Television GmbH v NLM* [2004] 1 C.M.L.R. 5, ECJ).

“Series of two or more offences of the same or a similar character”: see SAME.

Of Companies: Stat. Def., Income and Corporation Taxes Act 1970 (c.10) s.532(6)(a).

“35. ‘Series’ takes its meaning from its context. In some contexts it denotes matters which together form part of a whole, as in the Ashes Test series against Australia. In other contexts it denotes matters of a similar kind which occur one after the other, as in a series of explosions on board tankers carrying crude oil. In yet other contexts it denotes matters which bear a logical relationship with each other, as in what is the next number in the series 5,10,15 ?

36. In the present case the words to be construed are ‘a series of related matters or transactions’ in a solicitors’ insurance policy. In particular, the words ‘related matters or transactions’ must be considered, for they throw light upon the intended meaning of ‘series’. They must of course be considered having regard to the context in which they are found, namely, an aggregation clause in a solicitors’ insurance policy the aim and object of which is to aggregate several claims into one claim for the purpose of applying the insurers’ limit of liability per claim. It is only by examining the words used in their context that the court can identify the meaning which the clause in question would be reasonably understood to bear.” (*AIG Europe Ltd v OC320301 LLP* [2015] EWHC 2398 (Comm).)

SERIES OF TRANSACTIONS. Stat. Def., Finance (No.2) Act 2005 s.30(1)(c).

SERIOUS. The Criminal Justice Act 1991 (c.53) uses “serious” in several contexts where it seeks to give sentencing guidelines. Thus under s.1(2)(a) robbery at knife point is serious enough to justify a custodial sentence (*R. v Cunningham, The Times*, December 3, 1992). See also *R. v Lewis, The Times*, March 29, 1993 (burglary); *R. v Powell*, (1992), 13 Cr.App.R.(S.) 202 (indecent assault); *R. v Decino, The Times*, May 10, 1993 (theft from telephone box).

Under s.2(2)(b) some acts may be justified to protect the public from serious harm: see *R. v Gardiner* [1994] Cr.App.R.(S.) 747.

Under s.6(1) a Community Service Order may be justified if the crime is serious enough to warrant such a sentence (*R. v Cox, The Times*, December 3, 1992).

Under s.60, “serious harm” in relation to children required a full review of the offence and the offender: see *R. v Croydon Youth Court, Ex p. G. (a Minor), The Times*, May 3, 1995.

“Serious deterioration” (Supreme Court Act 1981 (c.54) s.32A): see CHANCE.

“Serious Professional Misconduct”: see MISCONDUCT.

For the purpose of determining what amounts to a sufficiently serious threat to society to justify a person’s removal from a country, see the discussion of seriousness in *Bulale v Home Secretary* [2008] EWCA Civ 806.

As to the criteria to be applied in determining what amount to “serious doubts” in the context of the use of length of service criteria in relation to equal pay claims, see *Wilson v Health and Safety Executive* [2009] EWCA Civ 1074.

“60. In this context, I consider that on proper interpretation of paragraph 55.10 it is important to give full value to the word ‘serious’, in the phrase ‘serious mental illness’ (and indeed in the other cases qualified by that word, in the fourth and seventh bullet points), since that formula defines a class of case to which the ‘very exceptional circumstances’ test will be applied. Although application of the ‘very exceptional circumstances’ test does not prevent detention in all cases, it does—obviously—make it significantly more difficult to justify detention (and hence increases the risk that a person, not being detained as a result of application of that test, might abscond to avoid his removal and the effective implementation of immigration controls in his case). On a proper interpretation, the circumstances in which that more restrictive test falls to be applied should be relatively narrowly construed, since otherwise the effective, firm and fair operation of immigration controls may be excessively undermined.

61. In my view, ‘serious mental illness’ connotes a serious inability to cope with ordinary life, to the level (or thereabouts) of requiring in-patient medical attention or being liable to being sectioned under the Mental Health Act 1983, or a mental condition of a character such that there is a real risk that detention could reduce the sufferer to that state—for instance, if there were a real risk that they could have a break-down in prison.” (*Das, R. (on the application of) v Secretary of State for the Home Department* [2013] EWHC 682 (Admin).)

“The use of the word ‘serious’ obviously distinguishes the statutory test from the common law as stated in *Thornton*. The threshold identified in *Thornton* was that the statement should ‘substantially’ affect attitudes in an adverse way, or have a tendency to do so. The *Jameel* test also requires a tort to be ‘substantial’. As Bean J noted in *Cooke v MGN Ltd* [2014] EWHC 2831 (QB), [2014] EMLR 31 [37], examination of the Parliamentary history of the section shows that the word ‘serious’ was chosen deliberately in place of the word ‘substantial’. It follows that the seriousness provision raises the bar over which a claimant must jump, as compared with the position established in the two cases mentioned.” (*Ames v Spamhaus Project Ltd* [2015] EWHC 127 (QB).)

SERIOUS CRIME. For discussion of the concept of serious crime in the context of refugees see *AH (Algeria) v Secretary of State for the Home Department* [2012] EWCA Civ 395.

SERIOUS CRIMINAL. Stat. Def., s.72 of the Nationality, Immigration and Asylum Act 2002 (c.41).

SERIOUS HARDSHIP. Courts (Emergency Powers) Act 1917 (c.25) s.1(2): see *Electric Pavilions v Lorden* [1918] 2 Ch. 399, distinguished in *Metropolitan Electric Supply Co v London CC* [1919] 1 Ch. 357; see also *Direct US Cable Ltd v Western Union Telegraph Co* [1921] 1 Ch. 370; *North Metropolitan Electric Power Supply Co v Stoke Newington Corp* [1921] 1 Ch. 455.

SERIOUS

SERIOUS HARM. In immigration law, in context of refugee status: see *Elgafaji* [2009] 2 C.M.L.R. 45 ECJ.

Stat. Def., Defamation Act 2013 s.1.

SERIOUS INJURY. Stat. Def., “means a fracture, a deep cut, a deep laceration or an injury causing damage to an internal organ or the impairment of any bodily function” (s.29 of the Police Reform Act 2002 (c.30)).

SERIOUS PROFESSIONAL MISCONDUCT. See MISCONDUCT.

SERJEANT-AT-LAW. See 3 Bl. Com. 27; 6 BING. N.C. 232–239. See PREMIER.

SERJEANTY. “‘Grand serjeanty’ is where a man holdeth of the King certaine land by the service of carrying his banner or lance, or to leade his host, or to be his carver or butler at his coronation.

“‘Petit serjeanty’ is when one holdest of the King, paying to him yeerly a bow, a sword, a speare, and such like, and that is but SOCAGE, in effect” (Termes de la Ley, *Grand Serjeanty*). Later on (*Petit Serjeanty*) the learned author says that the bow should be “without string”.

See further as to grand serjeanty, Litt. ss.153–158; Co Litt. 105B–108A; 2 Bl. Com. 73 et seq.; as to petit serjeanty, Litt. ss.159–161; Co Litt. 108A–108B; 2 Bl. Com. 81 et seq.

Tenures Abolition Act 1660 (c.24), which converted the old military tenures (of which serjeanty was one) into free and common socage, preserved the honorary service of grand serjeanty.

See TENURE.

SERMON. As to an endowment for a “sermon” once a year, see *Re Avenon’s Charity* [1913] 2 Ch. 261.

SERVANT. “Servant” (Licensing Act 1964 (c.26) s.169) does not include an agent, and the wife of a licensee was held to be an agent (*Brandish v Poole* [1968] 1 W.L.R. 544).

As to whether a bookmaker’s clerk in sole charge of business but with limited authority is “negotiating bets as a servant or agent to” his master so as to require a bookmaker’s certificate in his own name, is a question of fact in each case: see *Lake v Cronin* [1929] 1 K.B. 31.

“Servant of the Crown”: the Custodian of Enemy Property having received property into his hands in his capacity as a servant of the Crown was immune from income tax thereon (*Bank voor Handel en Scheepvaart v Administrator of Hungarian Property* [1954] A.C. 584).

(Licensing Act 1964 (c.26) s.169.) The fact that a servant of a company exercised control over another company servant did not render the latter the servant of the former (*Russell v DPP* (1997) 161 J.P.N. 184).

For the purpose of s.58(2) of the Goods Vehicles (Licensing of Operators) Act 1995, A can be B’s servant temporarily, even though he is also C’s employee, if B is entitled to control the task and the way in which A performs it (*Interlink Express Parcels Ltd v Night Trunkers Ltd* [2001] R.T.R 338, CA).

“Clerk or servant”: see CLERK.

See FARM SERVANT; MALE SERVANT; OFFICER; POSSESSION; SERVANT IN HUSBANDRY; SERVANTS; WORKMAN; DOMESTIC SERVANT.

SERVANT IN HUSBANDRY. A “servant in husbandry” was a person, whether male or female, whose chief employment is in works of husbandry; i.e. the culture or keeping of the ground, or the management or working of horses or cattle, or the

gathering in of crops, or any other work strictly pertaining to the manual labour required by farmers (*Davis v Berwick*, 30 L.J.M.C. 84; *Ex p. Hughes* 23 L.J.M.C. 138). Cp. AGRICULTURAL.

See FARM SERVANT.

SERVANTS. "If a man have a licence for himself 'and his servants' to hunt in a chase, park, or warren, at his pleasure; this is a licence of profit; for by virtue of those words 'for himself and his servants', the grantee hath a property in the thing hunted, because he may justify hunting by his servants, which is more than a licence of pleasure" (Manwood, *Hunting*, pl. 17; see further *Wickham v Hawker* 10 L.J. Ex. 153; FREE LIBERTY). See further HUNTING; PROFIT À PRENDRE.

SERVE; SERVICE. (Employment.) In feudal times, and still as regards copyholds, "service" is that service which the tenant, by reason of his fee, oweth unto his lord" (Cowel). Cp. SUIT.

"Service" to the King, for which he might grant "recompense" so that the grant was protected by 34 & 35 Hen. 8, c.20, and which, if an entail, could not be barred (Fines and Recoveries Act 1833 (c.74) s.18) might be rendered to a King de jure, e.g. Charles II between the date of his father's execution and his own restoration (*Robinson v Gifford* [1903] 1 Ch. 865; see further SUBJECT). Such a grant by the King implied that service was rendered (*Perkins v Sewell*, 1 Bl. W. 654), unless the contrary appeared, e.g. where the grant expressed it to have been in consideration of "the natural love and affection which he (Charles II) had and bore towards his most dear natural son, Henry Fitzroy, Earl of Euston" (*Grafton v London & Birmingham Railway*, 8 L.J.C.P. 47). Cp. EX MERO MOTU.

Service (Local Government Superannuation Act 1937 (6, c.68) s.8(5)) had the same meaning as in s.40(1), and included contributory and non-contributory service (*Jobbins v Middlesex CC* [1949] 1 K.B. 142).

"Five years' service with the company" in a will did not mean continuous service, and did not include war service (*Re Bedford* [1951] Ch. 905); see also *Re Marryat* [1948] Ch. 298, cited PERIOD, para.(3).

"Contract of service": see CONTRACT OF SERVICE.

Stat. Def., Income and Corporation Taxes Act 1970 (c.10) s.224(1).

SERVE; SERVICE (NOTICE). A notice may generally be either in writing or oral; if directed to be "given", or is spoken of as to be "received" (*Thompson v Ayling*, 4 Ex. 614), it may be in either of those modes; but if it is to be "left" or "served", then there is an implication that the notice is to be written (*Wilson v Nightingale*, 8 Q.B. 1034; *R. v Shurmer*, 17 Q.B.D. 323, especially judgment of Coleridge C.J., in this last case). But "serve" does not enjoin personal service; and as used in Bankruptcy Rules 1886 r.186, a prepaid registered letter sufficed (*Re McGrath*, 24 Q.B.D. 466).

"Proper service" (Customs and Excise Act 1952 (c.44) Sch.VII para.4): where the solicitors specified in the notice of claim are in existence but are no longer in a position to accept service of the writ, and no notice of any change of solicitors has been given, service of such solicitors will be "deemed proper service" (*Customs and Excise Commissioners v I.F.S. Irish Fully Fashioned Stockings* [1957] 1 W.L.R. 397).

"Give . . . notice in writing" (Law of Property Act 1925 (c.20) s.36(2)) is the same as "serve" and therefore posting is sufficient, as provided for by s.196(4) (*Re 88 Berkley Road, Rickwood v Turnsek* [1971] 2 W.L.R. 307).

"Given . . . to each of the other parties" (Criminal Justice Act 1967 (c.80) s.2(2)(c)) is satisfied if service is effected on each party's solicitor (*R. v Bott* [1968] 1 W.L.R. 583).

"Served on him" (Road Traffic Act 1972 (c.20) s.10(5), as amended by the Transport Act 1981 (c.56) Sch.8). Service accepted by defendant's counsel is a valid service for the purposes of this section (*Penman v Parker* [1986] 1 W.L.R. 882).

"Writ . . . served . . . by . . . post . . . to . . . principal place of business" (Rules of the Supreme Court Ord.81 r.3(1)). A writ was held to have been "served" within the meaning of this rule when it was delivered to the principal place of business although not addressed to it (*Austin Rover Group v Crouch Butler Savage Associates* [1986] 1 W.L.R. 1102).

"Sufficiently served" (Companies Act 1985 (c.6) s.695(1)). A writ served on one of the persons whose names and addresses had (as required by Pt XXIII of the Act) been delivered by an overseas company to the Registrar of Companies as authorised to accept service was held to have been "sufficiently served", notwithstanding that the company had ceased to have a place of business in Great Britain (*Punjab National Bank v Rome and Bathurst* [1989] F.L.R. 380).

The service of a writ, defence or counterclaim by facsimile transmission of documents (fax) was good service if it could be proved that a legible copy of the document, which otherwise met the rules, came into the hands of the party to be served (*Rahux NV/SA v Spencer Mason, The Times*, 18 May 1989). Service by fax of documents that are not originating process is good service if the transmission results in a legible document (*Hastie and Jenkerson v McMahon* [1990] 1 W.L.R. 1575).

Service of a court order on a plaintiff at his last known address was not properly effected by delivery of it to his London address when the solicitors serving Conflict between the blood/alcohol level figures provided by blood and breath specimens could amount to a "special reason" for not disqualifying ("Smith jurisdiction") (R.S.C. Ord.10 r.1(2)). The words "within the jurisdiction" refer to the defendant and not to the writ for service. So that, where it was established that within seven days of the placing of a writ through the defendant's letter box he came to know of its existence on returning from abroad, the service was valid, notwithstanding that at the time the writ was placed in his letter box he had been outside the jurisdiction (*Barclays Bank of Swaziland v Hahn* [1989] 1 W.L.R. 506). A writ must be served personally on each defendant by the plaintiff or his agent (R.S.C. Ord.10 r.1). But there is nothing in the Rules of the Supreme Court prohibiting agreement by the parties on a mode of service outside the provisions of Order 10 (*Kenneth Allison v AE Limehouse & Co* [1991] 3 W.L.R. 671). A writ contained in a sealed envelope inserted through the letter box of the English home of the defendant, at a time when she was in India was, in the absence of a statement by the plaintiff that in his opinion the writ would have come to the knowledge of the defendant within seven days of the date of insertion in the letter box, not served to the satisfaction of the court (*India Videogram Association v Patel* [1991] 1 All E.R. 214).

"Service of any document" (R.S.C. Ord.65 r.5(1)). The use of facsimile transmission of a document (other than one required to be served personally or one originating process) constituted good "service" provided that it could be proved that the document, in a complete and legible state, had in fact been received by the person on whom service was to be effected (*Hastie and Jenkerson v McMahon* [1990] 1 W.L.R. 1575).

“Service of a summons” (County Court Rules 1981 (SI 1981/1687) Ord.7 r.10(1)). Service had to be made to an address at which the defendant had some continuing presence. That could not include a place where he was never present even though it had a direct and immediate connection with him (*Willowgreen v Smithers*, *The Times*, December 14, 1993).

But a summons posted to a defendant’s last known address in England and posted on by a friend to the defendant who had moved to Spain was held to have been properly served under this rule (*Rolph v Zolan* [1993] 1 W.L.R. 1305).

Where a tenant occupied a bed-sitting room in a building in multiple occupation, delivery of a notice to the common front entrance by the postman amounted to “service” for the purposes of s.196(3) of the Law of Property Act 1925 (c.20) (*Henry Smith’s Charity Trustees v Kyriakou* [1989] 50 E.G. 42).

“Shall serve a notice” (Control of Pollution Act 1974 (c.40) s.58(1)). Service of an abatement notice by inserting it through the letter box of the relevant premises is good service for the purposes of this section (*Lambeth LBC v Mullings* (1990) R.V.R. 259).

“Served . . . at his usual or last known place of residence, or his place of business” (Taxes Management Act 1970 (c.9) s.115(2)). A notice sent to a place of business no longer occupied was not duly “served” within the meaning of this section (*Re A Debtor* (No.1240/SD/91), *Ex p. The Debtor v IRC* [1992] S.T.C. 771).

(State Immunity Act 1978 (c.33) s.12(1).) Service on a diplomatic mission was not service on the state of that mission for the purposes of s.12(1) of the 1978 Act and service was not effected until the document had been transmitted to the government department responsible for foreign affairs of the relevant state and had been received by that department (*Kuwait Airways Corp v Iraqi Airways Co* [1995] 3 All E.R. 694).

“Already serving . . . a term of imprisonment” (Magistrates’ Courts Act 1980 (c.43) s.82(3), as amended by the Criminal Justice Act 1982 (c.48) s.77 Sch.14 para.52). A custodial sentence took effect as soon as it was pronounced so that justices were entitled to commit a fine defaulter to prison in the exercise of their powers under s.82(3) of the 1980 Act as he was “already serving a term of imprisonment” (*R. v Grimsby and Cleethorpes Justices*, *Ex p. Walters* [1997] 1 W.L.R. 89).

(Race Relations Act 1976 (c.74) s.20.) Those parts of a police officer’s duties involving assistance to, or protection of members of the public entailed the provision of services to the public and fell within the scope of s.20.

See also GIVE.

SERVE; SERVICE (SENTENCE). A youth who had been sentenced to Borstal but who had absconded before completing his sentence had not “served a previous sentence” within the meaning of s.3(3) of the Criminal Justice Act 1961 (c.39) (*R. v Hughes* [1968] 1 W.L.R. 560).

SERVED. A person is not “served” with proceedings for the purposes of Council Regulation (EC) 44/2001 art.34(2) merely by way of being notified but not in accordance with the relevant regulations (*Tavoulareas v Tsavlis* [2006] EWCA Civ 1772).

See DULY SERVED.

SERVI. A fixed sum, which was subject to an indexed escalation clause, payable as a contribution towards the cost of repairs and maintenance without any reference to actual costs incurred or about to be incurred was not a service charge within the meaning of the Housing Act 1985 (c.68) Sch.6 para.16A (*Coventry City Council v Cole* [1994] 1 All E.R. 997).

See VILLANI.

SERVICE. “Although in normal social parlance, ‘delivering’ a document ‘personally’ would often be understood to mean service by the sender personally, I do not consider that that is the natural meaning in a provision such as clause 13.2. After all, in the case of a notice on behalf of Mr Hormell, this would mean that Mr Hormell would have to deliver the Notice: that cannot be right, and is not suggested by Mr Bompas. So the normal social meaning cannot be invoked. Secondly, the concept of ‘personal service’ is well understood to mean service on the recipient personally, not service by the server (or anyone else) personally—see e.g. per Lord Bridge and Lord Goff in *Allison Limited v Limehouse & Co* [1992] AC 105, 113 and 124 respectively. Although it is true that the well known expression ‘personal service’ has not been used, it seems to me that the legally familiar concept of personal service is redolent in the relevant words of clause 13.2. The reason why the word ‘delivering’ rather than ‘serving’ is used in clause 13.2 is that having used the word ‘served’ as a generic term, it was then thought appropriate to distinguish between two types of service, namely, handing over (‘delivering’) and posting (‘sending’).” (*Ener-G Holdings Plc v Hormell* [2012] EWCA Civ 1059.)

“Specifically, the issue focuses upon the meaning of the word ‘serving’ of legal proceedings in respect of a claim for breach of warranty. Although this judgment addresses particular words used in a particular agreement it appears from previous case law that the clause and the phrase in dispute is not untypical of other share purchase agreements. . . .

53. First, the perspective from which the provision must be interpreted is that of the parties, not the reasonable lawyer. Neither party submitted to me that simply because the critical word in dispute—‘serving’—concerned an aspect of legal process that the relevant perspective was to be altered to that of a lawyer or even a business man with a lawyer permanently hovering at his shoulder whispering advice. Lord Clarke in the passage cited at [35] above in *Rainy Sky v Kookmin Bank* referred to the process of construction as involving determining ‘what the parties meant that the language used’ and the ‘parties’ are the parties to the agreement, not third party advisers. This has some significance in the present case because whilst the word ‘serving’ used in Schedule 4(3) and the surrounding phrases (‘legal proceedings’ etc) refer broadly to legal concepts the draftsmen has neither defined those terms in the SPA nor linked them to any specific procedural rule save to say that English law governs.

54. This is especially the case with a phrase such as ‘serving’. The expression is one which can bear a number of different and conflicting meanings covering points in time before, on, and after receipt. For instance it can mean dispatch in the sense that a document is ‘served’ from the point in time of its dispatch or sending and therefore prior to its receipt. In such cases the modes of dispatch are frequently spelled out (fax, DX, first class recorded post, etc). The parties by this method in effect agree a risk transfer away from the sender and on to the other party: see the discussion of such clauses in *Ener-G Holdings Plc* (ibid) at paras [23], [29], [30], [35] per Lord Neuberger MR. Alternatively, the phrase ‘service’ (and its cognates) might be read simply to mean delivery in a form which brings the contents of the document being served to the actual attention of the intended recipient. In such circumstances a document or other instrument will be served only when it is proven that the intended recipient was in actual possession of the document or instrument in issue. This is in my view the normal meaning of the concept of ‘service’. And yet further it is possible

that 'service' (and cognates) may be treated as having occurred at a point of time after actual receipt by the inclusion in the contract of provisions which define service as having occurred, for example, 'x' days or hours following proof of actual receipt. This analysis shows that the phrase 'serving' is not a term which necessarily imports a fixed or technical meaning. Its ordinary meaning is delivery upon and receipt by the intended recipient, but that can be modified by contractual provisions. This is not, in my view, one of those cases where the parties have carefully and deliberately chosen a very precise legal term of art which, accordingly to consistent case law, should be accorded its technical meaning and which the parties would accordingly understand as having a precise legal meaning: see the discussion of legal terms of art in Lewison, *The Interpretation of Contracts* (5th edition, 2011) s.5.08 et seq." (*Ageas (UK) Ltd v Kwik-Fit (GB) Ltd* [2013] EWHC 3261 (QB).)

Stat. Def., "includes facility" (Health and Social Care Act 2012 s.150).

For a detailed examination of the requirements of personal service today see *Tseitline v Mikhelson* [2015] EWHC 3065 (Comm).

SERVICE (ADVOCACY). Stat. Def., "Advocacy services" are services which provide assistance (by way of representation or otherwise) to persons for purposes relating to their care and support, Social Services and Well-being (Wales) Act 2014 s.181.

SERVICE (OTHER). See SAME SERVICE.

SERVICE CHARGE. The maintenance charge levied under a head lease and then sub-divided into portions to be paid by sub-tenants is a service charge for the purposes of the Landlord and Tenant Act 1987 (*Ruddy v Oakfern Properties Ltd* [2006] EWCA Civ 1389).

SERVICE COMPLAINTS OMBUDSMAN. Stat. Def., Armed Forces Act 2006 s.365B inserted by the Armed Forces (Service Complaints and Financial Assistance) Act 2015 s.1.

SERVICE COURT. Stat. Def., s.75 of the International Criminal Court Act 2001 (c.17).

Stat. Def., Armed Forces Act 2006 s.324(4).

SERVICE MARK. See SERVICE.

SERVICE OF GOD. A bequest for "the service of God" (*Re Darling* [1896] 1 Ch. 50), or for "the service of my Lord and Master, and, I trust, Redeemer" (*Powerscourt v Powerscourt*, 1 Moll. 616), is a good charity. So, a gift to the ringers of a parish church who should ring a peal of bells from 6 to 7 am on each May 29, "in commemoration of the happy restoration of the monarchy to England", is a good charity, for the intention was to bring back happy thoughts necessarily connoting "a feeling of gratitude to the Giver of all good gifts" (per Kekewich J., *Re Pardoe* [1906] 2 Ch. 184).

See RELIGIOUS.

SERVICE OF THE SHIP. Master, seaman, or apprentice, receiving "hurt or INJURY in the service of the ship" (s.228 of the Merchant Shipping Act 1854 (c.104)), includes an injury received from an occurrence causing the wreck of the ship (*Lord Advocate v Grant*, 1 Sess. Ca. (4th Ser.) 447). See Merchant Shipping Act 1906 (c.48) s.34. See further 1 Maude & P. (4th edn) 208, no.(i).

SERVICE

A shipowner is not liable, under s.34(1) of the Merchant Shipping Act 1906 (c.48), for surgical or medical advice, etc. after the master, seaman, or apprentice has been brought back to the home port (*Anderson v Rayner* [1903] 1 K.B. 589; see also *Anchor Line, Ltd v Mohad* [1922] 1 A.C. 146).

SERVICE OFFENCE. Stat. Def., Armed Forces Act 2006 s.50(2).

SERVICE PROPERTY. Stat. Def., Armed Forces Act 2006 s.26.

SERVICE TO THE PUBLIC. “If the Directive meant to confine its application to transport undertakings to those which are subject to a public service obligation, it would have said so. On the contrary, I consider that the wording ‘service to the public’ is used by way of distinction from the situation where an operator provides a service to only a limited class of persons, e.g. a railway carrying only freight, or the post office underground railway that operated in London until 2002.” (*Alstom Transport v Eurostar International Ltd* [2012] EWHC 28 (Ch).)

SERVICE VEHICLE (IN CONTEXT OF ARMY). Stat. Def., s.16(8) of the Armed Forces Act 2001 (c.19).

SERVICEABLE. “Good and serviceable repair”: see GOOD REPAIR.

SERVICES. A company running taxicabs is not “rendering a service” within s.19 of the Finance Act 1937 (c.54) (*London General Cab Co v Inland Revenue Commissioners* [1950] 2 All E.R. 566).

“Services used for the purposes of a building operation” within reg.56A of the Defence (General) Regulations 1939, did not include the services of architects (*Young v Buckles* [1952] 1 K.B. 220). It seems that work on a driveway to a garage did not come within the phrase “services for a building” within Pt II of Sch.VI to reg.56A (*Muir v James* [1953] 1 Q.B. 454).

“Services” (Housing Repairs and Rents Act 1954 (c.53) s.40): see *R. v Paddington North and St. Marylebone Rent Tribunal Ex p. Perry* [1956] 1 Q.B. 229.

“Services” (Rent Act 1965 (c.75) s.28(1)) could include management charges and selective employment tax where these were incurred by the landlord in the provision of services (*Metropolitan Properties Co v Noble* [1968] 1 W.L.R. 838).

“Service” (Local Government Act 1933 (c.51) s.76(1)) meant a service which the local authority provided for the public, and did not extend to the provision of a house (*Brown v DPP* [1956] 2 Q.B. 369).

The supply of drugs to National Health Service hospitals is use for the “services of the crown” within the meaning of the Patents Act 1949 (c.87) s.46(1) (*Pfizer Corp v Ministry of Health* [1965] A.C. 512).

“Services” (Theft Act 1978 (c.31) s.1). A survey by a building society’s agent is a “service” within the meaning of this section, but the opening of an account by the building society or the advance of a mortgage are not (*R. v Halai* [1983] Crim. L.R. 624).

(EEC Treaty Arts 59, 60.) Courses provided in a technical institute of secondary education in the context of a national education system could not be regarded as “services” within the meaning of art.59 (*Belgian State v Humbel* (No.263/86) [1988] E.C.R. 5365). Medical termination of pregnancy, performed in accordance with the law of the state where it is carried out is a “service” within the meaning of arts 59 and 60 of the EEC Treaty (*Society for the Protection of Unborn Children (Ireland) v Grogan*, *The Times*, October 7, 1991). Lottery activities were “services” within the meaning of art.60 of the EEC Treaty. However, a prohibition on the importation of materials relating to a lottery organised in another Member State could not be regarded

as a measure involving an unjustified interference with the freedom to provide services (*Commissioners of Customs and Excise v Gerhart Schindler* [1994] Q.B. 610).

Lottery activities, including the importation of advertisements and tickets with a view to the participation by residents of one state in a lottery operated in another Member State were “services” under the EEC Treaty art.60 (*Customs and Excise Commissioners v Schindler* [1994] Q.B. 610).

See also SUPPLY.

“Used in relation to services” (Trade Marks (Amendment) Act 1984 (c.19) s.1(7) as substituted by s.2(1)(b) of the Patents, Designs and Marks Act 1986 (c.39)): for a service to fall within the definition of “service mark” in this section it had to be charged for separately and as such (*Re Boots Co* [1989] 3 All E.R. 948).

A seaman’s entitlement to severance payment on termination of his employment is not remuneration for services to a ship and cannot constitute a maritime lien against the ship (*The Tacoma City* [1991] 1 Lloyd’s Rep. 330).

The services provided by a hospital are services for the purpose of the provisions on freedom to provide services in art.59 of the EC Treaty (*Geraets-Smits v Stichting Ziekenfonds* [2002] 2 W.L.R 154, ECJ).

The promise of “cash back” in the course of a remortgage arrangement amounted to the provision of services and facilities for the purpose of s.14(1) of the Trade Descriptions Act 1968 (false statements as to services or facilities in the course of a business) and was not merely a representation about price (*R. v Killian (John), R. v Lang (Peter John)* [2002] EWCA Crim 404).

For the purposes of EC Treaty provisions about the free movement of services (art.50) an essential feature of a service is that it is something normally provided for remuneration. Premiums for insurance can amount to remuneration for services (*Skandia v Risskatteverket* [2004] 1 C.M.L.R. 4, ECJ).

Retail trade in goods can amount to a service for the purposes of Council Directive 89/104/EEC on trade marks (*Praktiker Bau-und Heimwerkermärkte AG v Deutsches Patent und Markenamt* (Case C-418/02) ECJ).

Stat. Def., Furnished Houses (Rent Control) Act 1946 (9 & 10 Geo. 6, c.34) s.12(1); Rent Act 1968 (c.23) s.84; Fair Trading Act 1973 (c.41) ss.117(1), 137(3)(4); Restrictive Trade Practices Act 1976 (c.34) s.20; Rent (Agriculture) Act 1976 (c.80) Sch.6; Rent Act 1977 (c.42) ss.19(8), 85(1) Sch.8 para.1.

“Provision . . . of . . . services to the public”: see PROVISION.

In VAT context: see ADVERTISING SERVICES.

See IN SERVICE.

SERVICING PREMISES. “Vehicles servicing premises” (City of Hereford (High Town) (Prohibition of Driving and Cycling) Order 1973 art.5(3)). Where traffic regulations forbade entry to all vehicles other than those “servicing premises”, it was held that a private hire car delivering passengers was not “servicing premises” (*Phillips v Proser* [1976] R.T.R. 300).

SERVIENT. “Servient tenement”: see EASEMENT.

SERVING OFFICER. Stat. Def., Police Reform Act 2002 Sch.3 as inserted by Police (Complaints and Conduct) Act 2012.

SERVITUDE. See EASEMENT.

“Penal servitude”: see PENAL.

SESSIONS

SESSIONS “Sessions”, in our law, is a sitting of justices in court upon their commission, as the sessions of oyer and terminer” (Termes de la Ley). Cp. TO BE PASSED.

“Sessions” (Local Government Act 1888 (c.41) s.35(5)): see *Re Dover and Kent CC* [1891] 1 Q.B. 389, cited QUARTER SESSIONS.

“Next quarter sessions”: see NEXT.

“Court of sessions”: see COURT.

See GENERAL OR QUARTER SESSIONS; PETTY SESSIONS; PRESENTMENT; SITTING; SPECIAL.

SET. Enamel work may possibly be a jewel, but if it is worked on a gold or silver foundation it is not “set” in the metal within s.2, Plate (Offences) Act 1738 (12 Geo. 2, c.26): see *Fabergé v Goldsmith’s Co* 80 L.J. Ch. 97, cited PLATE.

SET APART. To “set apart” land for a particular purpose, does not require that the setting apart should be irrevocable (*Re Ponsford and Newport School Board* [1894] 1 Ch. 454). Therefore, land acquired by a private cemetery company for the purpose of a burial ground, which they have adapted for that purpose by enclosing it and providing it with a chapel and using part of it for burials, is “set apart for the purposes of interment”, within s.1 of the Metropolitan Open Spaces Act 1881 (c.34), as amended (and also applied to Disused Burial Grounds Act 1884 (c.72)) by ss.2 and 4 of the Open Spaces Act 1887 (c.32), although the land has never been consecrated; and the company has power to sell or let any part of it (*ibid.*) *secus*, as regards the site of a church where intramural interment has taken place (*Re Ecclesiastical Commissioners and New City of London Brewery* [1895] 1 Ch. 702, followed in *Att-Gen v London Parochial Charities* [1896] 1 Ch. 541). See BURIAL GROUND.

“Retain and set apart”: see RETAIN.

SET FIRE. In arson, “as to what constitutes ‘setting fire’, it is not necessary that flame should be seen (*R. v Stallion* 1 Moody, 398); but it is not sufficient that wood should be scorched black (*R. v Russell C. & M.* 541). It is sufficient if the wood has been at a red heat (*R. v Parker* 9 C. & P. 45). I suppose the question is whether the thing burnt has, or has not, began to be decomposed by the action of the fire” (Steph. Cr. (9th edn) 426, fn.7) See further Arch. Cr. (32nd edn) 824; Rosc. Cr. (15th edn) 393–4; BURN; FIRE.

SET FORTH. It is submitted that where there are, in the operative part of a deed, clear and unambiguous words of description of the lands or chattels to be thereby conveyed, such words will not be restricted by a statement that such lands or chattels are “described” or “mentioned” or “specified” or “set forth”, in a schedule which gives an imperfect enumeration (*Walsh v Trevanion*, 15 Q.B. 733; *Re Royal Maine Hotel Co* [1895] 1 L.R. 368; *Baker v Richardson*, 6 W.R. 663; cp. *Goodtitle v Southern*, 1 M. & S. 299, and like cases, cited OCCUPATION). But this principle was not applied in *Wood v Rowcliffe* (6 Ex. 407), where it was held that a bill of sale of “all the household goods of every kind and description whatsoever in A, more particularly mentioned and set forth in” a schedule, only passed the goods mentioned in the schedule; and that, indeed, will be the effect if it can be seen that the intention was that the schedule should be an exhaustive enumeration (*Walsh v Trevanion*, above).

Director of a company to “set forth” the nature of his interest in a contract with his company: see *Costa Rica Railway v Forwood* [1901] 1 Ch. 746, cited DECLARE.

See TRULY SET FORTH.

SET OFF. A legal set-off is: "where there are mutual debts (see DEBT) between the plaintiff and defendant, or if either party sue or be sued as executor or administrator (where there are mutual debts between the testator or intestate and either party), one debt may be set against the other" (Insolvent Debtors Relief Act 1728 (c.22) s.13; Set-off Act 1734 (c.24) s.4). See as to set-off and counter-claim, R.S.C. old Ord.18 r.16 and old Ord.15 r.2 respectively. As used in R.S.C., "set-off" and "counter-claim" "confer definite and independant remedies upon a defendant against the plaintiff" (per Brett L.J., *Pellas v Neptune Marine Insurance*, 5 C.P.D. 39); probably a "counter-claim" may be defined as a claim independant of, and separable from, the plaintiff's claim, and which formerly would have had to be enforced by a cross action. See hereon per Lord Davey, *Williams v North's Collieries* [1906] A.C. 136, cited PAYMENT; cp. *Re Paraguassu Co*, 8 Ch. 254; see also *Bennett v White* [1901] 2 K.B. 643, cited ABSOLUTE ASSIGNMENT; *Jones v Harris* [1927] 1 K.B. 425. See ADMITTED SET-OFF.

Set-off under s.31 of the Bankruptcy Act 1914 (c.59) is not restricted to mutual creditors, debts and other dealings arising out of contract; and, in this case, the Crown was allowed to set-off the moneys owing to it in respect of taxation and social security benefits against its obligation to repay value added tax (*Re DH Curtis (Builders)* [1978] Ch. 162).

"Set off", in s.23(2) of the Industrial and Provident Societies Act 1893 (c.39), was "not used in the strict legal sense but more in the business, or accountant's sense, as indicating that the society may deduct, or write off, from the sum credited the amount of the member's debt" (per Alverstone C.J., *Re Gwawr-y-Gweithyr Industrial Society* [1901] 2 K.B. 482).

The defence of a breach of warranty to a claim for the price of goods sold, was held not to be a set-off, and notice of the intention to set up such a defence need not therefore be given: see *Bright v Rogers* [1917] 1 K.B. 917.

"Set off" (Limitation Act 1939 (c.21) s.28). It has been questioned whether this refers to a legal set off, as permitted by the statutes, where the cross-claims arise out of separate transactions, or an equitable set off (*Henriksens Rederi v Rolimpex* [1973] 3 W.L.R. 556).

SET OUT. Where an award under the Inclosure Act 1845 (c.118), after making compensation to the lord of the manor, proceeded to "set out, allot, and award" other parts of the common to other persons, those words conveyed the whole legal estate in the several allotments, to the exclusion of the lord (*Simcoe v Pethick* [1898] 2 Q.B. 555, considering *Att-Gen v Meyrick* [1893] A.C. 1).

SET OVER. See ASSIGN; UNDERLEASE.

SET UP. Trade, etc. "set up and commenced" (Income Tax Act 1842 (c.35) s.100 Sch.D Case 1 r.1): see *Ryhope Co v Foyer* 7 Q.B.D. 485; cp. *Ball v National Provincial Bank* [1904] 1 K.B. 149, cited SUCCEED; *Merchiston SS Co v Turner* [1910] 2 K.B. 923.

"Set up or carry on the business or profession of a surgeon": see *Palmer v Mallett*, 36 Ch. D. 411; or business of a house agent: see *Farebrother v England*, 92 L.T. 129.

To "set up" in practice as a physician or surgeon is, semble, as nearly as possible the same thing as to "carry on" that profession; therefore, where A agrees not to "set up in practice" as a physician or surgeon within a defined area, it will be a breach "if he goes and habitually practises in the district, quite irrespective of whether he has a house there or not" (per Williams L.J., *Robertson v Buchanan*, 73 L.J. Ch. 408); but if he

SETTING

only visits two or three old patients, that “is not ‘setting up in practice’ within the prescribed area” (per Stirling L.J., *Robertson*); if the phrase were “not to PRACTISE”, “it would be very difficult, if not impossible, to justify attending a single patient, for remuneration, within the limits named” (per Williams L.J., *Robertson*).

An agreement not to “set up or become interested in, either directly or indirectly”, a stated business, is not broken by becoming a salaried servant in such business (*Gophir Diamond Co v Wood* [1902] 1 Ch. 950); in that case, Swinfen Eady J. observed on the absence of “the common words ‘concerned in’ and ‘engaged in’”—phrases which are, probably, synonymous. But see *Ramoneur v Brixey*, 55 S.J. 489, cited CONCERNED IN. See *Cory v Harrison* [1906] A.C. 274, cited INTERESTED IN. Cp. *Robertson v Wilmott*, 53 S.J. 631, cited PRACTISE.

“Setting up a counterclaim”: a notice of an intention to rely on a counter-claim, contained in correspondence passing between plaintiffs’ and defendants’ solicitors was not a setting up of a counterclaim within the meaning of the old R.S.C. Ord.21 r.16 (see now Ord.15 r.2), so as to entitle the defendants to proceed with the counterclaim, if the plaintiffs’ action is discontinued: see *The Saxicava* [1924] P. 131.

A power of advancement to “set up in business” a beneficiary, does not authorise an advance to pay debts, or (if the beneficiary be a woman) to set up her husband in business (*Talbot v Marshfield*, 3 Ch. 622, cited ADVANCEMENT).

Machinery “set up” means, generally, completed, e.g. in a contract to “deliver and set up” (*Armitage v Haigh*, 9 T.L.R. 287). See ERECT; ERECTED.

SETTING DOG. “A ‘setting dog’ means any dog who stops at his game” (per Buller J., *Briarly v Athorpe*, 5 B. & 321, fn.); but in s.4 of the Game Act 1706 (c.16), “it is essential that it must be kept or used to kill game” (*Briarly; Hayward v Horner*, 5 B. & Ald. 317). Cp. GREYHOUND.

SETTING OUT. See STATEMENT SETTING OUT AMOUNT.

SETTING OUT OF SOLDIERS. The setting out of soldiers, which is one of the charitable purposes included in the preamble to the Statute (1601) 43 Eliz., c.4, includes the setting out of sailors of the Royal Navy but not those of the mercantile marine (*Re Corbyn, Midland Bank Executor & Trustee Co v Att-Gen* [1941] Ch. 400).

“Setting out of souldiers” (Charitable Gifts Act 1601 (c.4) (see CHARITY)), semble, means to raise or equip (*Re Stephens* [1892] W.N. 140). See also PUBLIC CHARITY.

SETTLED “Settled land” (Law of Property Act 1925 (c.20) s.205(1)(xxvi)): see *Re Ryder & Steadman’s Contract*, 96 L.J. Ch. 388; *Re Gaul & Houlston’s Contract* [1928] Ch. 689.

Under Settled Land Act 1925 (c.18) s.1: see *Earl of Carnarvon’s Settled Estates* [1927] 1 Ch. 138; *Re Ogle’s Settled Estates*, 96 L.J. Ch. 113; *Re Bird*, 96 L.J. Ch. 127; *Re Alington and London County Council’s Contract*, 96 L.J. Ch. 465.

“Settled property”; “other property” (Finance Act 1894 (c.30) s.16(3) as substituted by the Finance Act 1954 (c.44) s.33(1)). Where A leaves property to B for life, and, after B’s death, as to one-third for a son of B, the son’s one-third share is not itself “other property” but “settled property” (*Remington v IRC* [1963] 3 All E.R. 69).

Shares in a family company transferred to trustees to be held by them under the terms of a trust deed for the settlors beneficially did not become “settled property” within the meaning of s.45 of the Finance Act 1965 (c.25) (*Booth v Ellard* [1980] 3 All E.R. 569).

“Settled property” (Finance Act 1965 (c.25) Sch.7 para.13(1)). Land held by two people in fee simple as joint tenants upon trust to sell the same and to hold the net

proceeds of sale upon trust for themselves as tenants in common was held “jointly” within the meaning of s.22(5) of this Act, and was not “settled property” within the meaning of Sch.7 para.13(1) (*Kidson v MacDonald* [1974] Ch. 339).

Bequest by a wife of her husband’s “settled funds”: see *Moysey v Stuart*, 23 L.T. 644.

Insurance to pay “same percentage on this policy as may be settled” by another office means that when that other office has agreed the amount of loss and accepted liability and nothing remains to be done except to pay, then it has “settled” the amount of the claim on its policy; but there is no such settlement if the amount of loss by the insured has been ascertained by arbitration, but the insured’s claim is defeated by its own fraudulent exaggeration (*Beauchamp v Faber*, 3 Com. Cas. 308).

(Settled Land Act 1925 (c.18).) Where the facts showed that it was the intention of the parties that the defendant cohabitee of the plaintiff would have the right to occupy a house for life, it was held that it was “settled land”, that she was tenant for life and that she was entitled to a vesting deed (*Ungurian v Lesnoff* (1989) 133 S.J. 946).

“Settled in the United Kingdom” (Immigration Act 1971 (c.77) s.2(1)(c)). An applicant who had obtained entry to the United Kingdom through a deception, and who had knowledge of the deception, was not entitled to be treated as “settled” in the United Kingdom within the meaning of this section (*R. v Secretary of State for the Home Department, Ex p. Miah* [1990] 2 All E.R. 523).

(European Convention on Human Rights art.8.) “Settled” was to be given the same meaning as in the immigration legislation of the United Kingdom so that a person who was in the United Kingdom pending the outcome of an asylum application was not “settled” for the purposes of the Home Office’s Policy Document entitled “Marriage and Children” (*R. v Secretary of State for the Home Department, Ex p. Sekhon (Paramjit)* [1995] Imm.A.R. 338).

Stat. Def., Finance Act 1965 (c.25) s.45(1); Income and Corporation Taxes Act 1970 (c.10) s.167(1); Development Land Tax Act 1976 (c.24) s.30; Capital Gains Tax Act 1979 (c.14) ss.17(7), 51, 61(4); Finance Act 1984 (c.43) s.71, Capital Transfer Act 1984 (c.51) s.43.

SETTLED (RESIDENCE). “Settled” (Immigration Act 1971 (c.77) s.1(2)) means ordinarily resident without restriction, but a person who has entered illegally cannot be “ordinarily resident” and is not therefore protected by this section (*R. v Governor of Pentonville, Ex p. Azam* [1973] 1 W.L.R. 528). A person who had been permitted to reside for a period in the UK through the mistaken belief that he had diplomatic status did not thereby become “ordinarily resident” and was therefore not “settled” in the UK within the meaning of s.2(3)(d) of the 1971 Act (*R. v Immigration Appeal Tribunal, Ex p. Coomasaru* [1983] 1 W.L.R. 14).

For a person to be “already in the United Kingdom and settled here” within the meaning of the Statement of Immigration Rules for Control of Entry; Commonwealth Citizens (1973) H.C. 79 para.39, he must be physically present in the country. It is not enough to have settled previously in this country and then to have returned to the country of origin (*R. v Immigration Appeal Tribunal, Ex p. Manek* [1978] 1 W.L.R. 1190).

Whether a child is “settled in its new environment” for the purposes of art.12 of the Hague Convention on the Civil Aspects of Child Abduction depends on the emotional and psychological elements of settlement as well as on the physical characteristics (*Cannon v Cannon* [2005] 1 W.L.R. 32, CA).

SETTLED

Stat. Def., Immigration Act 1971 (c.77) ss.(2)(3)(d), 33; British Nationality Act 1981 (c.61) s.50.

SETTLED ACCOMMODATION. “Settled accommodation” (Housing Act 1985 (c.68) Pt III). Accommodation provided in a hostel for the homeless as a first stage in the discharge of the duty under the Housing Act 1985, s.65(2) towards permanent accommodation was not “settled accommodation” (*R. v Rushcliffe BC, Ex p. Summerson and Buckley* (1993) 25 H.L.R. 577).

“Settled accommodation” did not have to be suitable permanent accommodation although a material consideration had to be the assumption by a local authority of a duty under 1985 Act s.65(2) (*R. v Brent LBC, Ex p. Awua HL* (1994) 26 H.L.R. 539). An assured shorthold tenancy granted by a private landlord which might reasonably be expected to be renewed at the end of its fixed term could qualify as “settled accommodation” (*R. v Wandsworth LBC, Ex p. Crooks, The Times*, April 12, 1995).

“Settled intention” as an element of habitual residence related to a decision to live in a particular place rather than settlement in the sense of permanent or long-term residence, since habitual residence could be for a limited period (*Moran v Moran* [1997] S.L.T. 541).

SETTLED PROPERTY. Stat. Def., for Tax Acts, Income and Corporation Taxes Act 1988 s.685A inserted by Finance Act 2006 Sch.13; Income Tax Act 2007 s.466; Corporation Tax Act 2010 s.1119.

SETTLEMENT. Definitions of “settlement” are contained in Settled Land Act 1882 (c.38) s.2(1), and in Settled Land Act 1925 (c.18) ss.1, 117. As to which see *Re Ogle’s Settled Estates* [1927] 1 Ch. 233; *Re Monckton’s Settlement* [1917] 1 Ch. 224, followed in *Re Sutton’s Contract* [1921] W.N. 9; but see *Re Carnarvon’s Settled Estates* [1927] 1 Ch. 138, cited SETTLED.

“Settlement” (Settled Land Act 1925 (c.18) s.1): see *Re Booth’s Contract*, 43 T.L.R. 334; *Re Cowley* [1926] 1 Ch. 725; *Re Cradock* [1926] Ch. 944; *Re Symons* [1927] 1 Ch. 344. A consent order in the Divorce Court under s.192 of the Judicature Act 1925 (c.49) was a “settlement” under the Settled Land Act.

A legacy which is disclaimed and falls into residue settled by the will forms part of the settled property as from the death of the testator (*Re Parsons* [1994] Ch. 12, cited under COMPETENT TO DISPOSE).

(Finance Act 1936 (c.34) s.21(9)(b)—see now Income and Corporation Taxes Act 1970 (c.10) s.437). See *Copeman v Coleman* [1939] 2 K.B. 484; includes (by definition) a transfer of assets and therefore includes an out-and-out gift (*Hood-Barrs v Inland Revenue Commissioners* [1946] 2 All E.R. 768). See also *Thomas v Marshall* [1953] 2 W.L.R. 944 (money put into children’s Post Office Savings Bank accounts held to be “settlements”). A transaction entered into under compulsion, e.g. under an order of the Divorce Court, is a “settlement” within these sections (*Yates v Starkey* [1951] Ch. 465).

The power to revoke or otherwise determine a settlement, within s.38(1)(a) of the Finance Act 1938—see now Income and Corporation Taxes Act 1970 (c.10) s.445—must be found in the settlement (*Inland Revenue Commissioners v Wolfson* [1949] 1 All E.R. 865); see also *Jenkins v Inland Revenue Commissioners* [1944] 2 All E.R. 491.

“Settlement” (Finance Act 1938 (c.46) s.38(2)(a); see now Income and Corporation Taxes Act 1970 (c.10) ss.445, 446) did not only denote the document or instrument (if any) recording the terms of the disposition, trust, covenant, agreement or arrangement.

A settlement may be “determined” even though some deed or written instrument remains physically in existence (*IRC v Kenmore* [1956] Ch. 483). A settlement was not excluded from the operation of this section merely because it was provided in the settlement that it was to be governed by foreign law (*IRC v Kenmore*).

(Finance Act 1938 (c.46) s.41(4)(a)(ii); see now Income and Corporation Taxes Act 1970 (c.10) s.454(3)). Income apportioned or sub-apportioned to a foreign company is not “income arising from a settlement” (*Howard de Walden (Lord) v Inland Revenue Commissioners* [1948] 2 All E.R. 825; *IRC v Pay* (1955) 48 R. & I.T. 412). Nor is a bona fide commercial transaction containing no element of bounty (*Bulmer v IRC* [1967] Ch. 145).

“Settlement” (Income Tax Act 1952 (c.10) s.411(2), now Income and Corporation Taxes Act 1970 (c.10) s.454(3)). A 14 year-old actress agreed that her earnings from a film studio should be paid to a company fund for that purpose. She entered into a service agreement with the company for a nominal annual salary. All the capital of the company was vested in the trustees of a settlement of which she was to be the sole beneficiary on reaching the age of 25. This series of transactions was held to be a single “arrangement” and therefore a “settlement” within the meaning of the section. It was also held that by entering into the service agreement with the company and the agreement with the film studio, she had “undertaken to provide funds directly or indirectly for the purpose of the settlement”, and was therefore a “settlor” within the meaning of this section (*IRC v Mills* [1974] 1 W.L.R. 1342).

An arm’s length arrangement with a charitable company whereby, in consideration of the payment to him of a capital sum, the taxpayer covenanted to make payments to the company over a number of years, was held not to be a “settlement” for the purposes of the Income and Corporation Taxes Act 1970 (c.10) s.457 as it contained no element of bounty (*IRC v Plummer* [1979] 3 W.L.R. 689). Similarly another arrangement without any element of bounty was held not to be a “settlement” within the meaning of s.22(4)(5), Sch.7 paras 17, 21 of the Finance Act 1965 (c.25) (*Berry v Warnett* [1978] 1 W.L.R. 957), and a scheme for appointing shares through non-resident trustees, made to avoid capital gains tax, was held not to constitute a “settlement” for the purposes of s.42 of that Act as no bounty was involved (*Chinn v Hochstrasser* [1979] Ch. 447).

(Stamp Act 1891 (c.39).) A verbal declaration of trust of property A and a settlement of different property B, containing a recital of the declaration of trust and an appointment of new trustees of property A were one “settlement”; and stamp duty was exigible on the value of all the property (*Cohen and Moore v Inland Revenue Commissioners* [1933] 2 K.B. 126).

Accepting certificates of deduction of tax from payments in respect of royalties does not constitute a “settlement of account” (*Gwyther v Boslymon Quarries* [1950] 2 K.B. 59).

“Settlement” (Income and Corporation Taxes Act 1970 (c.10) ss.437(1), 444(2)). Where a husband covenanted under a deed of separation with his wife to pay maintenance to their children, the deed of separation, containing as it inevitably must an element of bounty, was held to be a “settlement” within the meaning of these sections (*Harvey v Sivyer* [1985] 3 W.L.R. 261). A complicated arrangement whereby dividend income was paid to infant children in respect of their shareholdings in a company formed for that purpose, and managed by their fathers, was an “arrangement” within the meaning of s.444(2) and, containing as it did an element of

SETTLEMENT

bounty, was held to be a “settlement” under s.437(1). The income therefore came to be treated for tax purposes as that of the fathers (*Butler v Wildia* [1988] L.S. Gaz., December 14, 43).

“What is to be taken for the purposes of capital transfer tax to be a settlement” (Finance Act 1975 (c.7) Sch.5 para.1). The five successive steps taken to implement an elaborate scheme, devised to avoid liability to capital transfer tax, evolving round the settled property provisions of Sch.5, were effective and achieved their purpose. As the steps were not preordained and thus could not constitute a single composite transaction they were not struck down by the anti-avoidance principles laid down in *Ramsay v IRC* [1982] A.C. 300 (*Fitzwilliam v IRC* [1993] 3 All E.R. 184).

Stat. Def., Administration of Estates Act 1925 (c.23) s.55; Land Charges Act 1925 (c.22) s.20; Land Registration Act 1925 (c.21) ss.3 and 88; Law of Property Act 1925 (c.20) s.205; Settled Land Act 1925 (c.18) s.117; Trustee Act 1925 (c.19) s.68; Income and Corporation Taxes Act 1970 (c.10) ss.298, 444, 454(3); Finance Act 1975 (c.7) Sch.5 para.1; Finance Act 1984 (c.43) s.71; Capital Transfer Act 1984 (c.51) s.43.

Stat. Def., Income Tax (Trading and Other Income) Act 2005 (c.5) s.620.

For the purposes of s.660A of the Income and Corporation Taxes Act 1988, settlement income arrangements were a settlement where the affection between husband and wife provided the consideration for the benefit conferred (*Jones v Garnett* [2007] UKHL 35).

“27. In my view the Revenue’s argument is to be preferred. I reach this conclusion by considering carefully the words in s.48(3)(a) – ‘the time the settlement was made’. Those words are capable of describing both the making of the original settlement, and the subsequent addition of property to that settlement. The latter is possible because that addition is a disposition whereby the property becomes held on trust, in accordance with the definition in s.43(2). It is not a distortion of the words so to use it. One must not lose sight of the fact that ‘settlement’ is defined in terms which include not merely the end result of something, but which also include the concept of a ‘disposition’. It is a sort of ‘disposition plus end result’ concept.” (*Barclays Wealth Trustees (Jersey) Ltd v HM Revenue & Customs* [2015] EWHC 2878 (Ch).)

See DEED; EQUITY; FULL AND FINAL SETTLEMENT; MARRIAGE SETTLEMENT; PROTECTOR OF THE SETTLEMENT; STRICT SETTLEMENT; TRUSTEE; VOID; VOLUNTARY SETTLEMENT; ARRANGEMENT.

SETTLEMENT (RESIDENTIAL). “Admitted for settlement” (The Statement of Immigration Rules for Control on Entry 1973 (H.C. 81) r.38(c)) connotes a present intention to settle in the UK. So that the wife of a person already settled in the United Kingdom, who brought their child with her from Pakistan, with the intention of staying a short while before returning alone to Pakistan, had not been “admitted for settlement” within the meaning of this rule (*R. v Immigration Appeal Tribunal, Ex p. Rashida Bibi* [1988] Imm. A.R. 298). See also FOR.

SETTLER. See SQUATTER.

SETTLOR. “Settlor” (Income Tax Act 1952 (c.10) ss.405(1), 411(2); now Income and Corporation Taxes Act 1970 (c.10) ss.447(3)). A 14 year-old girl, although the sole beneficiary of a settlement, was held not to have had a proper understanding of the arrangements being made on her behalf, and so to have had no intention of providing funds “for the purpose of the settlement”. It was therefore held that she was not a

“settlor” under these sections (*Mills v IRC* [1973] 1 Ch. 225). See also *IRC v Leiner* [1964] T.R. 63. This decision was reversed. See [1974] 1 W.L.R. 1342 and SETTLEMENT, para.(16).

Stat. Def., Income and Corporation Taxes Act 1970 (c.10) ss.454(3), 444(2); Finance Act 1975 (c.7) Sch.5 para.6; Finance Act 1984 (c.43) s.71; Capital Transfer Act 1984 (c.51) s.44.

Stat. Def., for Tax Acts, Income and Corporation Taxes Act 1988 s.685A inserted by Finance Act 2006 Sch.13; Income Tax Act 2007 s.467.

SEVEN. “Seven clear days before the hearing” (Companies (Winding-up) Rules 1949 (No.330) r.28). Saturdays and Sundays are excluded (*Re Display Multiples* [1967] 1 W.L.R. 571).

SEVERABLE. The mere fact that by the terms of a contract the seller could have converted it into several contracts by his mode of performance did not necessarily make the contract “severable” within the meaning of s.11(1)(c) of the Sale of Goods Act 1893 (c.71) (*Rosenthal J & Sons v Esmail* [1965] 1 W.L.R. 1117).

SEVERAL. Sometimes read “respectively”: see *Woodstock v Shillito*, 6 Sim. 416; 1 Jarm. (8th edn) 608.

A building contract to do the “several works” therein mentioned or referred to, will not be read distributively as if “several” were “respective”; “several”, in such a connection, means “divers”, and comprehends “all the works that are to be done, and not each portion of them” (per Mathew J., *Cunliffe v Hampton Wick*, 2 Hudson, 263), so that the time during which the builder is to make good defects, runs from the completion of all the works, and not from the completion of that part where the defect arises (*Cunliffe*).

“Several” meant more than two (*Clowes Development (UK) Ltd v Secretary of State for the Environment* [1996] E.G.C.S. 163).

See JOINT; JOINTLY AND SEVERALLY; SEPARATE COVENANT; SEVERALTY.

SEVERAL COVENANT. A several covenant is “a covenant by two or more severally, i.e. separately” (Jacob); see further Platt Cov. 115. See SEPARATE COVENANT; cp. JOINT.

SEVERAL FISHERY. See FISHERY.

“Several fishery” is not a term of art (*Holford v Bailey*, 13 Q.B. 426, cited SOLE). A several fishery may be granted without the use of the word “several” (*Hanbury v Jenkins* [1901] 2 Ch. 401).

The owner of a several fishery in a public navigable river is, prima facie, owner of the bed of the river (*Hindson v Ashby* [1896] 2 Ch. 1). So, of a several fishery on the foreshore (*Att-Gen v Emerson* [1891] A.C. 649), or in a non-navigable river (*Ecroyd v Coulthard* [1898] 2 Ch. 358). See further *Hanbury v Jenkins* [1901] 2 Ch. 401; FISHERY.

SEVERAL ISSUES. See ISSUES.

SEVERAL PASTURAGE. See PASTURAGE.

SEVERAL TENANCY. See ENTIRE.

SEVERALLY. A gift to two or more “severally”, or with a limitation to their heirs “as they shall severally die” (*Sheppard v Gibbons*, 2 Atk. 441) creates a tenancy in common.

See JOINTLY AND SEVERALLY; SUCCESSIVELY.

SEVERANCE. A contingent legacy only bears interest from its vesting, unless a severance of it be directed for the benefit of the legatee, as distinguished from

SEVERE

severance as a mere facility in distribution (*Festing v Allen*, 5 Hare, 575; *Dundas v Wolfe-Murray*, 32 L.J. Ch. 151; *Re Judkin*, 25 Ch. D. 743; *Re Dickson*, 54 L.J. Ch. 212, 510; *Re Medlock*, 55 L.J. Ch. 738); see hereon *Re Marten*, 70 L.J. Ch. 354; cp. SPECIFICALLY. A direction “from and after” the death of a tenant for life to “raise and pay” a contingent legacy, does not create such a severance (*Re Inman* [1893] 3 Ch. 518). Cp. TO BE PAID.

As to how severance of a joint tenancy may be effected, see Law of Property Act 1925 (c.20) s.36(2); *Hunter v Babbage* (1995) 69 P. & C.R. 548.

“Severance of land by a railway”: see MATERIAL DETRIMENT. See *Piggott v Middlesex CC*, 77 L.J. Ch. 813.

As to apportioning the rent where there is a severance of the land demised, see *Salts v Battersby* [1910] 2 K.B. 155.

SEVERE. “Severe financial hardship” (Legal Aid Act 1974 (c.4) s.13(3)). In considering whether a successful unassisted defendant would suffer “severe financial hardship” within the meaning of this section if required to meet his total costs, the capital and income of his spouse can be taken into account (*Adams v Riley* [1988] 2 W.L.R. 127). There is no reason why a local authority or any other large body should not be able to make a claim under this section on the grounds that costs in legal proceedings would cause “severe financial hardship”; but these are strong words and indicate some impairment of the ability to function normally (*R. v Greenwich LBC, Ex p. Lovelace (No.2)* [1992] 1 Q.B. 155).

“Severe impairment of intelligence” (Sexual Offences Act 1956 (c.69) s.45, as substituted by s.127(b) of the Mental Health Act 1959 (c.72) as amended by s.65(1) and Sch.3 para.29 of the Mental Health (Amendment) Act 1982 (c.51)) is to be measured against the standards of normal persons, and the opinions of medical experts, if admissible at all, have no bearing (*R. v Hall (J.H.)* (1988) 86 Cr.App.R. 159).

“Severe discomfort” (Mobility Allowance Regulations 1975 (SI 1975/1573) reg.3) is not synonymous with “severe pain or distress” (*Cassinelli v Secretary of State for Social Services, The Times*, December 6, 1991).

SEVERED. Where the owner of land occupied it himself and demised the right of sporting to another, that right was “severed” from the occupation of the land within Rating Act 1874 (c.54) s.6(2) (*Kenrick v Guilsfield*, 5 C.P.D. 41, distinguishing *R. v Battle*, L.R. 2 Q.B. 8).

Sporting rights, though capable of being granted only by deed, could be “severed” from the occupation of the land within s.6(1) of the Rating Act 1874 (c.54) by a tenancy agreement under hand reserving the sporting rights (*Cleobury Mortimer Rural DC v Childe* [1933] 2 K.B. 368).

SEVERN. Severn “is a wild unruly river, and many times shifts its channel” (Hale, De Jure Maris, Ch.4).

See TRIBUTARY; CREEK.

SEWAGE. There was no prescribed definition of “sewage” in the Public Health Act 1875 (c.55), but in that Act it included liquids (not injurious to health) coming from manufacturing processes, as well as ordinary house sewage (per Charles J., *Peebles v Oswaldthistle* [1897] 1 Q.B. 384; reversed on another point nom. *Pasmore v Oswaldtwistle* [1898] A.C. 387, and followed on this point in *Eastwood v Honley* [1900] 1 Ch. 781). *Eastwood v Honley* was affirmed [1901] 1 Ch. 645. But in *Brook v Meltham* [1909] A.C. 438, cited SEWER, the Court of Appeal did not approve

Eastwood v Honley and in his judgment Fletcher Moulton L.J. said, "sewage matter does not, in my opinion, include manufacturing refuse" (the Court of Appeal was affirmed in the House of Lords).

"Sewage" (Public Health Act 1875 (c.55) s.17): see *Dell v Chesham Urban DC* [1921] 3 K.B. 427. See Public Health Act 1936 (c.49) s.30. See FILTHY WATER.

Where the effluent water from a sewage farm flowed into a pool, the cleansing, levelling and concreting the bottom of that pool to prevent the accumulation of sewage was a work "for sewage purposes" within s.32 of the Public Health Act 1875 (c.55) (*Wimbledon v Croydon*, 32 Ch. D. 421). Cp. Public Health Act 1936 (c.49) s.16.

Stat. Def., Metropolis Management Act 1858 (c.104) s.32; Public Health Act 1936 (c.49) s.343; Public Health (London) Act 1936 (26 Geo. 5 and 1 Edw. 8, c.50) s.81(1).

"Sewage effluent": Stat. Def., Rivers (Prevention of Pollution) Act 1951 (14 & 15 Geo. 6, c.64) s.11(1); Control of Pollution Act 1974 (c.40) s.56.

SEWER. "'Sewer' comes from the word to 'sew', i.e. to drain, and has a much more extended signification; embracing works on the largest scale, such as draining the Fens of Lincolnshire by means of canals, etc." (per Kindersley V.C., *Sutton v Norwich*, 27 L.J. Ch. 742, cited by Byrne J., *Newcastle-upon-Tyne v Houseman*, 43 S.J. 140); in this last case the Ouseburn (a tidal stream) was held to be included in "sewer" as used in s.63 of the Newcastle-upon-Tyne Improvement Act 1870 (c. xc).

As used in the Statute of Sewers (23 Hen. 8, c.5), a sewer "is a fresh water trench, compassed in on both sides with a bank, and is a small current or little river" (Callis, 80); "a passage or gutter to carry water into the sea or a river" (Cowel). But more largely, it has been said that "sewer" properly means "a sea-fence, a protection against sea tides, whatever its construction" (per Toulmin Smith, cited in note E.B. & E. 426, where also is cited Spelman's derivation). It certainly included a wall (*Isle of Ely Case*, 10 Rep. 140), and in that comprehensive sense it was used in ss.68, 204 of the Metropolis Management Act 1855 (c.120) (*Poplar v Knight*, 28 L.J.M.C. 37). Cp. GUTTER.

Where drains from individual terrace houses flowed into a common pipe underneath one of them, that common pipe was held to be a "sewer" within the meaning of the Public Health Act 1875 (c.55) s.4, which vested in the local authority by virtue of s.13 (*Weaver v Family Housing Association (York)* (1975) 74 L.G.R. 255).

A pumping station was not a "sewer", within s.16 of the Public Health Act 1875 (c.55), but it was an "apparatus" for distributing or disposing of sewage within s.27 (*King's College v Uxbridge* [1901] 2 Ch. 768).

A pipe capable of being used for the drainage of buildings is a "sewer" within the meaning of ss.17 and 343 of the Public Health Act 1936 (c.49) even though sealed off and not in use (*Blackdown Properties v Ministry of Housing and Local Government* [1967] Ch. 115). A culvert did not become a "sewer" within the meaning of s.343 by virtue only of the fact that there was a build-up of water due to urban development of the land. There would have had to be some alteration in the essential character of the culvert (*British Railways Board v Tonbridge and Malling DC* (1981) 79 L.G.R. 589).

A stream may become a sewer: see *West Riding Rivers Board v Gaunt*, 67 J.P. 183; *Same v Preston*, 69 J.P. 1; *Att-Gen v Lewes*, 55 S.J. 703; but see *Leeds Worsted Dyers' Association v West Riding Rivers Board*, 70 J.P. 480.

"Sewers" in proviso 2 s.7 of the Rivers Pollution Prevention Act 1876 (c.75) was not confined to sewers proper but included the whole sewerage system of the authority such as bacterial purification works: see *Brook v Meltham* [1909] A.C. 438,

disapproving *Eastwood v Honley* [1900] 1 Ch. 781, cited *SEWAGE*, and *Guthrie v Brechin*, 15 Rettie 385. See Public Health Act 1936 (c.49) s.26 proviso (c).

(Public Health Act 1936 (c.49) s.343.) A sewer is nonetheless a “sewer” within the meaning of this section whether or not it is in use as a sewer. The word is descriptive of the pipes’ function and not of their actual use at any time (*J Pullan & Sons v Leeds City Council* (1991) 7 Const. L.J. 222).

Stat. Def., Water Industry Act 1991 (c.56) s.219.

As to when a natural flow of water, such as a culvert, ceases to be a watercourse and becomes a sewer, see *Raglan Housing Association Ltd v Southampton City Council* [2007] EWCA Civ 785.

See PUBLIC SEWER.

SEX. The word “sex” in the Sex Discrimination Act 1975 includes a reference to sexual orientation as well as to gender, so discrimination on the grounds of sexual orientation falls within the scope of the Act (*MacDonald v Ministry of Defence* [2001] All E.R. 620, EAT).

“In my opinion, effect can be given to the clear thrust of Community law only by reading ‘the same sex’ in s.54(9) of the [Police and Criminal Evidence Act 1984], and ‘woman’, ‘man’ and ‘men’ in sections 1, 2, 6 and 7 of the [Sex Discrimination Act 1975], as referring to the acquired gender of a post-operative transsexual who is visually and for all practical purposes indistinguishable from non-transsexual members of that gender. No one of that gender searched by such a person could reasonably object to the search.” (*Chief Constable of West Yorkshire Police v A (No.2)* [2004] 2 W.L.R. 1209, HL.)

“Sex discrimination”: Stat. Def., Sex Discrimination Act 1975 (c.65) ss.1–5.

“Sex article”; “sex cinema”; “sex establishments”; “sex shop”: Stat. Def., Local Government (Miscellaneous Provisions) Act 1982 (c.30) Sch.3.

Stat. Def., Equality Act 2010 s.11.

SEX DISCRIMINATION. Stat. Def., Equality Act 2010 s.25.

SEXTON. “The sexton, segsten, segerstane, sacristan (*sacrista*, the keeper of the holy things belonging to the divine worship) seems to be the same with the ostiarius (see *OSTIARY*) in a Roman Church” (Phil. Ecc. Law, 1516). See further 62 J.P. 291; *St. Margaret, Rochester v Thompson*, L.R. 6 C.P. 445; *White v Norwood Burial Board*, 16 Q.B.D. 58.

SEXUAL. Stat. Def., Sexual Offences Act 2003 (c.42) ss.78 and 124.

SEXUAL ASSAULT. Stat. Def., Sexual Offences Act 2003 (c.42) s.3.

SEXUAL COMMUNICATION WITH A CHILD. Stat. Def., Sexual Offences Act 2003 s.15A as inserted by the Serious Crime Act 2015 s.67.

SEXUAL DEVIANCY. (Mental Health Act 1983 (c.20) s.1(3).) Sexual deviancy, for the purposes of this section, means the practice, not merely the inclination (*R. v Mental Health Review Tribunal, Ex p. Chatworthy* [1985] 3 All E.R. 699).

SEXUAL MISCONDUCT. Stat. Def., Industrial Tribunals Act 1996 (c.17) s.11(6).

SEXUAL OFFENCE. Attempted rape came within the definition of “sexual offence” for the purposes of the Criminal Justice Act 1991 (c.53) s.31(1) (*R. v Robinson, The Times*, December 3, 1992).

Stat. Def., Criminal Justice Act 1991 (c.53) s.31(1) as amended by Criminal Justice and Public Order Act 1994 (c.33) Sch.9 para.45; Industrial Tribunals Act 1996 (c.17) s.11(6); Sexual Offences (Protected Material) Act 1997 (c.39) s.2(1).

Stat. Def., Children and Young Persons Act 1963 (c.37) s.27(4); Protection of Children Act 1978 (c.37) s.2(2); Police and Criminal Evidence Act 1984 (c.60) s.80(7).

Stat. Def., s.161(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6).

In relation to Scottish law, Criminal Procedure (Scotland) Act 1995 (c.46) s.210A(10) inserted by Crime and Disorder Act 1998 (c.370) s.86(1).

SEXUAL ORIENTATION. Stat. Def., “means an individual’s sexual orientation towards—

- (a) persons of the same sex as him or her,
- (b) persons of the opposite sex, or
- (c) both.” (Equality Act 2006 s.35.)

Stat. Def., Equality Act 2010 s.12.

SEXUAL TOUCHING. Whether touching is sexual within the meaning of s.78(b) of the Sexual Offences Act 2003 depends on the nature of the touching and its circumstances and possible purpose. Touching of clothing can amount to touching within the meaning of the Sexual Offences Act 2003 (*R. v H. (Sexual assault: touching)* [2005] EWCA Crim 732).

SHACK. “‘Shack’ is a peculiar name of common, used in the countrey of Norfolke; and cattell go to shack, is as much to say, as to goe at liberty, or to goe at large” (Terms de la Ley). See further *Corbet’s Case*, 7 Rep. 5 a; *Cheesman v Hardham*, 1 B. & Ald. 710, 711.

SHADOW DIRECTOR. See DIRECTOR.

Stat. Def., Companies Act 2006 s.251.

SHAFT. In the Acts relating to mines, “shaft” includes pit: see Metalliferous Mines Regulation Act 1872 (c.77) s.41; Coal Mines Regulation Act 1887 (c.58) s.75.

“Shaft” (Coal Act 1938 (c.52 s.44(1)). Three disused mine shafts, which had been filled in and had subsided in varying degrees, were still “shafts” within the scope of this Act (*Gosforth UDC v National Coal Board* (1958) 172 E.G. 595).

See WORKING SHAFT.

SHAFTESBURY’S (LORD) ACT. Liberty of Religious Worship Act 1855 (18 & 19 Vict., c.86).

SHALL. “Too much care cannot be employed in using or construing this word. Its various meanings range under two general classes according as it is used—

As implying futurity; or

As implying a mandate, or giving permission or direction.

If something is agreed to be done if or when something else ‘shall’ happen, this contemplates futurity; and things that have happened and are existent at the time of the agreement will not accomplish the condition precedent to the fulfilment of the agreement.

‘Shall be born’, in the absence of a context, are words of futurity; and, in a will, mean persons born after its date” (*Gibbons v Gibbons*, 6 App. Cas. 471).

A reference in a will to children who “shall predecease me” referred to events to take place after the making of the will, and therefore excluded a child who had died before the date of the will (*Re McPherson* [1968] V.R. 368).

Where a testatrix provided legacies for her sisters and brothers and made special provisions for any of them who “shall predecease me”, it was held that the word

“shall” has a sense which indicates futurity and that therefore the special provisions could not operate in a case where a brother had died before the testatrix had made the will (*Re Rowlands* [1973] V.R. 225).

Sometimes, however, “shall” includes past time. Thus in a divesting clause, if donee of property “shall become bankrupt”, seems “to mean simply being bankrupt” (per Kindersley V.C., *Seymour v Lucas*, 29 L.J. Ch. 843); and in such a case it is immaterial whether the bankruptcy has happened before, or shall have happened after, the making of the instrument (*Seymour v Lucas*, above; *Manning v Chambers*, 16 L.J. Ch. 245; per Lindley L.J., *Re Akeroyd* [1893] 3 Ch. 363; see *HEREAFTER*); see also *TO BE BORN*. So, too, in an independent (as distinguished from a substitutionary) testamentary gift to the issue of a deceased member of a class, the words “shall die” or “shall happen to die” do not necessarily point to a future death, so as inevitably to exclude the issue of a member of the class who may have died before the date of the will (*Loring v Thomas*, 30 L.J. Ch. 789; *Christopherson v Naylor*, 1 Mer. 320, cited *SHARE*; see further 2 Jarm. (8th edn) 1328). So, where there was a gift to children, but if any of them “shall predecease me, leaving any child or children living at my death”, such child or children to take the parent’s share, the Court of Appeal held that that included the children of a child who was dead at the date of the will (*Re Gorringer* [1906] 2 Ch. 341, following *Loring v Thomas*, above); but the House of Lords reversed that decision (*Gorringer v Mahlstedt* [1907] A.C. 225); *Re Rayner*, 134 L.T. 141; *Re Walker*, 74 S.J. 106. So, where there is a bequest to two or more named persons at 21, and if either “shall die” under that age then his share to go to the survivor or survivors; if one be dead at the date of the will, his share goes to the survivor or survivors (*Re Sheppard*, 1 K. & J. 269). So, “a Surrender to such uses as the testator ‘shall’ by will appoint, applied to a will antecedently executed, it being considered that the surrender referred to that will which should be in existence at testator’s death” (1 Jarm. (4th edn) 58, citing *Spring v Biles*, 1 T.R. 435, fn.). So s.1 of the Poor Removal Act 1846 (c.66) excluded from the period necessary to give a pauper a status of irremovability the time during which he “shall” receive relief from a parish in which he did not reside; held, that that included a case where such relief had been give before the Act passed (*R. v Christchurch*, 12 Q.B. 149).

On the other hand, when a statute makes an alteration in the law and says it “shall” have effect, without more, that is a reason for not giving the alteration a retrospective operation (*Re Chapman* [1896] 1 Ch. 323, reversed on another point [1896] 2 Ch. 763). See further as to retrospective operation of statutes, *RETROSPECTIVE*.

Whenever a statute declares that a thing “shall” be done, that natural and proper meaning is that a peremptory mandate is enjoined. But where the thing has reference to (a) the time or formality of completing any public act, not being a step in a litigation, or accusation; or (b) the time or formality of creating an executed contract whereof the benefit has been, or but for their own act might be, received by individuals or private companies or private corporations, then the enactment will generally be regarded as merely directory, unless there be words making the thing done void if not done in accordance with the prescribed requirements.

“The Secretary of State shall consult with organisations... concerned” (Social Security and Housing Benefits Act 1982 (c.24) s.36(1)). “Shall” in this section is mandatory (*R. v Secretary of State for Social Services, Ex p. Association of Metropolitan Authorities* [1986] 1 All E.R. 164).

"The rules shall be so framed" (Immigration Act 1971 (c.77) s.1(5)). "Shall" is here mandatory (*R. v Immigration Appeal Tribunal, Ex p. Ruhul* [1987] 1 W.L.R. 1538; *R. v Secretary of State for the Home Department, Ex p. Zalihe Huseyin*, *The Times*, October 31, 1987). See also FREE.

"Shall not being later than" (Supreme Court Act 1981 (c.54) s.77(2)(b)). "Shall" is here directory and not mandatory (*R. v Governor of Spring Hill Prison, Ex p. Sohi* [1988] 1 All E.R. 424).

"The company shall" (Insolvency Act 1986 (c.45) ss.98, 99). "Shall" is here permissive and not mandatory (*Re Salcombe Hotel Development Co* (1989) 5 B.C.C. 807).

"The tribunal shall make an additional award" (Employment Protection (Consolidation) Act 1978 (c.44) s.71(2)(b)). The word "shall" in this section is directory not mandatory (*Conoco (UK) v Neal* [1989] I.R.L.R. 51).

"Shall give not less than 10 days' notice" (Company Directors Disqualification Act 1986 (c.46) s.16(1)). "Shall" here is directory and not mandatory, so that failure to give the 10 days' notice did not render the application for a disqualification order either void or voidable (*Secretary of State for Trade and Industry v Langridge* [1991] 2 W.L.R. 1343).

"Shall... supply... such information" (Adoption Act 1976 (c.36) s.51(1)). In interpreting Acts of Parliament which impose statutory duties in apparently absolute terms the courts should look to what was intended by Parliament and, as Parliament was presumed not to have intended that those terms should enable someone to benefit from his own serious crime, it was held that there was no absolute duty to provide the information requested under this section (*R. v Registrar-General, Ex p. Smith* [1991] 2 Q.B. 393).

"Shall tell... shall proceed" (Magistrates' Courts Act 1980 (c.43) s.21). "Shall" is mandatory and so, once a trial on indictment is ordered under this section, there is no power to vary the decision save as set down by s.25 (*R. v Liverpool Justices, Ex p. Crown Prosecution Service* (1990) 90 Cr.App.R. 261).

"The High Court... shall... order that they be struck out" (County Courts Act 1984 (c.28) s.40(1) as amended by s.2(1) of the Courts and Legal Services Act 1990 (c.41)). This section does not impose a mandatory requirement on the High Court to strike out proceedings which were wrongly stated in the High Court. There remains the option to transfer the proceedings to a County court (*Restick v Crickmore, The Times*, December 3, 1993).

The word "shall" has been held, in the following cases, only directory. As regards the time fixed for the appointment of overseers under Poor Relief Act 1601 (c.2) s.1 (*R. v Sparrow*, 2 Stra. 1123), or under Poor Law Overseers Act 1814 (c.91) (*R. v Staffordshire*, 10 L.J.M.C. 166); and as regards the time fixed by 8 Geo. 4, c. xxix, for the election of guardians for the Borough of Norwich (*R. v Norwich*, 1 B. & Ad. 310), by Highways Act 1772 (c.78) s.1, for appointment of surveyors of highways (*R. v Denbighshire*, 4 East, 142), or by Quarter Sessions Act 1814 (c.84) s.1, for holding quarter sessions (*R. v Leicester*, 5 L.J.O.S.M. 95); "and there can be no doubt that the same construction will be put upon the statutes (Law Terms Act 1830 (c.70) s.35, and April Quarter Sessions Act 1834 (c.47)), regulating the time for holding quarter sessions (see 4 Chitty's Statutes (3rd edn), 154, citing Dickinson on Quarter Sessions (6th edn), 65). All the various statutes as to the time for holding quarter sessions have always been held directory" (Dick. Q.S. (6th edn) 65).

“Shall proceed to the summary trial of the information” (Magistrates’ Courts Act 1952 (c.55) s.19(5)). The word “shall” in this subsection was not mandatory to the extent of depriving the magistrate of the right of permit the accused to change his mid and opt for trial by jury after all (*R. v Craske, Ex p. Metropolitan Police Commissioner* [1957] 2 Q.B. 591).

“Shall” (R.S.C. Ord.19 r.7(1)) is here not mandatory but directory, and does not deprive the court of the discretionary power to extend a party’s time to plead where it is just to do so (*Wallersteiner v Moir* [1974] 1 W.L.R. 991).

Cp. MUST.

The word “shall” and words in their ordinary meaning obligatory, have, in the following cases, been held peremptory.

“Shall issue” (Legal Aid (General) Regulations 1950 (No.1359) reg.5) did not mean that from the time that the duty to issue a legal aid certificate arose a certificate should be deemed to have been issued (*Lacey v W Silk & Son Ltd* [1951] 2 All E.R. 128).

“Shall pay” (the old R.S.C. Ord.42 r.1(2)) did not impose an obligation subject to a penalty (*Re A Debtor (No.277 of 1950), Ex p. The Debtor v Liguori* [1951] Ch. 95). See now R.S.C. Ord.45 r.2 where “shall” is replaced by “must”.

For a case of “shall” being taken as “directory” rather than “mandatory”, see *Stork* [2004] S.C.L.R. 513, Sheriff Court.

“We say that that would have been an obligation on the judge because s.42(1)(a) provides that proceedings to which it applies ‘shall’ be transferred to the High Court. That word does not always connote obligation, but in the present case it is to be contrasted with the deliberate use of the facultative ‘may’ in s 42(2).” (*Schmidt v Wong* [2005] EWCA Civ 1506 at [18].)

For a discussion of the use of the legislative “shall”, see *Craies on Legislation*, 8th edn, 2004, para.8.1.9.

“The submissions begin with the proposition that the word ‘shall’ in rule 67.2(6) and (7) [of the Criminal Procedure Rules 2005] ought to be read to mean ‘may’ rather than ‘must’. Even discounting the terms of rule 67.1, on any basis of ordinary construction this would be an abuse of language. ‘Shall’ is not a synonym for ‘may’.” (*Re A.* [2006] EWCA Crim 4 at [31].)

For a case of a legislative document using “shall” in some places and “must” in others, giving rise to attempts to draw a distinction in meaning, see *R. (Girling) v Parole Board* [2005] EWHC 546 (Admin).

For a case affirming the mandatory of shall in “shall be made on the following assumption”, see *Greenweb Ltd v Wandsworth London Borough Council* [2008] EWCA Civ 910.

“The principal argument was advanced by reference to a traditional dichotomy, namely whether the Regulation was to be regarded as ‘mandatory’ or ‘directory’, with invalidity being the consequence of the first but not the second. The judgment records that during argument Mr. Holgate drew counsel’s attention to the discussion of this general topic in de Smith et al Judicial Review (6th edn) to indicate that the law had moved on: see para.[36]. It would appear that little authority was otherwise cited to the Deputy Judge. In the course of the judgment he referred to Lord Woolf’s judgment in *R v Home Secretary ex parte Jeyanthan* [2000] 1 WLR 345 which, on any view, was an important stepping stone on the route away from the formalism inherent in the mandatory/directory dichotomy to the approach approved by the House of Lords in *Soneji*. Mr. Holgate identified a number of factors which would influence a court in

deciding the consequences of a breach of a statutory requirement: ‘First of all, there is the importance of the requirement. Some requirements are so important that absence of prejudice resulting from non-compliance is irrelevant. Secondly, the courts do consider whether the statutory requirement or purpose could be fulfilled by substantial compliance. If not, then the requirement may well be taken to be mandatory. Thirdly, regard should be had to the consequences of non-compliance. Fourthly, the issue is often determined in practice in the context of the facts of a specific case. Particularly helpful guidance was given in relation to this area by Lord Woolf MR in *R v Home Secretary ex parte Jeyeanthan* [2000] 1 WLR 354, 358-362. The starting point is that where the word “shall” is used “the requirement is never intended to be optional” (see page 358G).’” (*North Somerset District Council v Honda Motor Europe Ltd* [2010] EWHC 1505 (QB).)

“41. Here ‘shall be’ is used in the sense of ‘must be’. It is not looking to the future. It is looking to the present. Temporality is conveyed by ‘prior to and after’.” (*Napier Park European Credit Opportunities Fund Ltd v Harbourmaster Pro-Rata Clo 2 B.V.* [2014] EWCA Civ 984.)

“The word ‘shall’ has frequently been construed as permissive rather than mandatory; for example, *Stroud’s Judicial Dictionary of Words and Phrases* (7th edn), Vol.3, pp. 2522–2525, gives 17 examples of cases where the word has been so construed, usually with reference to the underlying policy of the Act in question. In the present case, we are of opinion that the policy underlying the existence of the roll of solicitors demands that the second respondent should have an element of discretion as to whether a request to remove a solicitor’s name from the roll should be granted, at least immediately. Provided that good cause exists for doing so, we consider that the second respondent should be entitled to refuse a request for removal. The likelihood of significant disciplinary proceedings would clearly provide a sufficient reason. Under the new wording of s.9, this result seems to be quite clear.” (*Opinion of the court delivered by Lord Drummond Young in the appeal by Michael Louis Karus against Scottish Legal Complaints Commission and Law Society of Scotland* [2014] ScotCS CSIH 59.)

See SHALL AND LAWFULLY MAY; MAY; WILL.

SHALL AND LAWFULLY MAY; SHALL AND MAY; SHALL AND MAY AND THEY ARE HEREBY EMPOWERED. “The words ‘shall and lawfully may’ are in their ordinary import obligatory, and ought according to established rule, to have that construction, unless it would lead to some absurd or inconvenient consequence, or be at variance with the intent of the legislature, to be collected from other parts of the Act” (per Parke B., delivering the judgment in *Chapman v Milvain*, 5 Ex. 61). Accordingly, it was held that those words in s.9 of the Country Bankers Act 1826 (c.46) rendered it necessary for actions by or against a banking company to be brought in the name of its public officer. See also *Steward v Greaves*, 12 L.J. Ex. 109; *Re London & Eastern Banking Corp*, 27 L.J. Ch. 457; *Watts v Shuttleworth*, 29 L.J. Ex. 229.

So the words “shall and may”, in Joint Stock Companies Act 1844 (c.110) s.66, were held obligatory (see MAY). But though for the offence of allowing an unauthorised person to act in his name, a solicitor “shall and may be struck off the roll, and for ever after disabled from practising” (Solicitors Act 1843 (c.73) s.32), yet the infliction of so heavy a penalty has been held not imperative, so that a lesser punishment might be imposed (*Re Grayston*, 58 L.J.Q.B. 451, fn.; *Re Lamb*, 23

SHALL

Q.B.D. 477, on which last case see *Re Kingdom and Wilson* [1902] 2 Ch. 242; *Re Sykes*, 34 S.J. 285; on the other hand, "shall and may" has been held imperative (*Re Two Solicitors*, 28 S.J. 90; *Re Eede*, 25 Q.B.D. 228; *Re Kelly* [1895] 1 Q.B. 180); but see *Re Two Solicitors*, 53 S.J. 342. Probably it may now be affirmed that "shall and may", in s.32 of the Solicitors Act 1843 (c.73), was imperative (*Re Burton & Blinkhorn* [1903] 2 K.B. 300).

The words in Poor Relief Act 1819 (c.12) s.17, whereby churchwardens and overseers "shall and may and they are hereby empowered" to accept, take, and hold, real property belonging to a parish, were imperative (*St. Nicholas, Deptford v Sketchley*, 8 Q.B. 394).

See SHALL; MAY; IT SHALL BE LAWFUL.

For an extensive list of earlier authorities see STROUD'S JUDICIAL DICTIONARY, 5TH EDN.

SHALL AND MAY BE LAWFUL. See IT SHALL BE LAWFUL.

SHALL AND WILL. "Shall and will release", semble, is not an actual release, but only a covenant to release (per Holroyd J., *Thomas v Courtnay*, 1 B. & Ald. 8).

SHALL BE. "Shall be appointed for the ensuing year" means for that year only, but not that an appointee should continue, in all circumstances, throughout the year (*Manton v Brighton Corp* [1951] 2 K.B. 393).

"Shall be liable": for the construction of these words in a will, see *Re Fenwick* [1923] 2 Ch. 775.

"Shall be my next-of-kin...": see *Hutchinson v National Refuges for Homeless and Destitute Children* [1902] A.C. 794.

"Shall be prosecuted summarily": see *R. v Goldberg* [1904] 2 K.B. 866, cited SUMMARILY.

"Shall be resold", in conditions of sale of a sale by auction: see *Robinson, Fisher & Harding v Behar* [1927] 1 K.B. 513.

"Shall not be registered": see *Re a Bankruptcy Notice*, 93 L.J. Ch. 497.

"Shall be begotten": see TO BE BORN.

"Shall be born": see SHALL; TO BE BORN.

"Shall be brought": see BROUGHT.

"Shall be settled": see AGREED AND DECLARED; SETTLED.

SHALL BECOME. "Shall become bankrupt": where an annuity was given by will to a beneficiary for a protected life interest with a gift over on bankruptcy, etc. and the annuitant, being an undischarged bankrupt at the testator's death, obtained his discharge before anything was payable to him under the terms of the will in respect of the annuity, the gift over was held to operate immediately on the testator's death. A bankrupt beneficiary in such a case can only acquire an interest if his bankruptcy is annulled (*Re Walker* [1939] Ch. 974).

"Shall become entitled": trusts declared by a will of a share to which a beneficiary "shall become entitled" under the will, fail, and the gift lapses, if the beneficiary predeceases the testator (*Re Taylor* [1931] 2 Ch. 237). See ENTITLED.

See BECOME.

SHALL DIE. In the phrase "shall die in my lifetime", in a will, the words "shall die" are equivalent to "shall be dead", and where there was a bequest of residuary estate to the children of any child of the testator who "shall die in my lifetime", and one such child died before he made his will, held that the children of such deceased child were entitled to the share which their father would have taken: see *Metcalfe v*

Williams [1914] 2 Ch. 61. But this case was distinguished in *Re Brown* [1917] 2 Ch. 232, where it was held that the words must be construed in their natural future sense and did not include a child known to be dead at the time when the will was made. See also *Re Walker* [1930] 1 Ch. 469; *Re Birchall* [1940] Ch. 424; *Re Booth's Will Trusts*, 163 L.T. 77.

SHALL HAVE BEEN. This phrase gives a statute a retrospective operation, e.g. a married woman whose husband “shall have been” convicted of an aggravated assault upon her (Summary Jurisdiction (Married Women) Act 1895 (c.39) s.4) (*Lane v Lane* [1896] P. 133).

See further *R. v Birwistle*, 58 L.J.M.C. 158; cp. HAS BEEN; IS.

SHALL THINK FIT. See THINK FIT.

SHALLOT. As to what is and is not a shallot, see *De Groot en Slot Allium BV v Ministere de l'Economie, des Finances et de l'Industrie* (C-147/04) [2009] 1 C.M.L.R. 22 ECJ.

SHALLOW HARBOURS. See HARBOURS.

SHAM. “I apprehend that, if it has any meaning in law, it means acts done, or documents executed by the parties to the ‘sham’ which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create” (per Diplock L.J., *Snook v London and West Riding Investments* [1967] 2 Q.B. 786).

Where a landlord let a flat to a company, bought for that purpose by the prospective occupier, instead of to that person and it was established that it was the intention of both parties, with all knowledge of what that involved, that the flat should be let to the company and not the occupier, it was held that a subsequent claim by the occupier that the transaction was a “sham” failed, and that the landlord had achieved his purpose, which was to avoid constituting the occupier a statutory tenant (*Hilton v Plustile* [1988] 3 All E.R. 1051). Similarly, a series of lettings of a flat to companies with which the occupier was associated were held not to be “shams” and therefore avoided conferring security of tenure on the occupier (*Estavest Investments v Commercial Express Travel* [1988] 49 E.G. 73).

A device for avoiding security of tenure, whereby a tenancy of an agricultural holding was granted to a nominee tenant who then granted a sub-tenancy to the person who wished to farm the land, although not strictly a “sham” in the sense envisaged by Diplock L.J. in *Snook v London and West Riding Investments* [1967] 2 Q.B. 786 [see Main Work, 2411] was an artificial scheme intended to achieve what the Agricultural Holdings Act 1948 (c.63) forbade, and therefore failed (*Gisborne v Burton* [1988] 38 E.G. 129).

“I accept that there is a difference between ‘artifice’ and ‘sham’. The description of ‘sham’ by Diplock LJ in *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786 at 802D-E is familiar, and may be taken as read. For present purposes I need cite only two passages in the judgment of Neuberger J in *National Westminster bank Plc v Jones* [2001] 1 BCLC 98. First, at paragraph [59] the judge said:-

“A sham provision or agreement is simply a provision or agreement which the parties do not really intend to be effective, but have merely entered into for the purpose of leading the court or a third party to believe that it is to be effective. Because the finding of a sham carries with it a finding of dishonesty, because innocent third parties may often rely upon the genuineness of a provision or an

SHAMEFUL

agreement, and because the court places great weight on the existence and provisions of a formally signed document, there is a strong and natural presumption against holding a provision or a document at sham.”

Second, at para.[46] the judge said:-

“...one should not lose sight of the fact that there is obviously a strong presumption, even in the case of an artificial transaction, that the parties to what appear to be perfectly proper agreements on their face intend them to be effective, and that they intend to honour and enjoy their respective obligations and rights. That that is so is supported by the fact that an allegation of sham carries with it a degree of dishonesty, and the court should be slow (but not naïvely or unrealistically slow) to find dishonesty.”

40. These passages demonstrate that artificial transactions are not necessarily sham transactions because they may be honest. This had been the point made by Sir Thomas Bingham MR in *Belvedere Court Management Ltd v Frogmore Developments Ltd* [1997] QB 858 in a passage reported at 876D in these terms (with citations omitted):- ‘I would ... accept the judge’s view that the ... leases were an artificial device intended to circumvent a result the [Landlord and Tenant Act 1987] would otherwise have brought about. But the finding of such a device did not defeat the reversioners in [Jones] nor the lessor in [Hilton] and I am not for my part satisfied that in the field of real property the principles in [Ramsay] and [Furniss] entitle the court simply to ignore or override apparently effective transactions which on their face confer an interest in land on the transferee. Many transactions between group companies may be artificial. That does not entitle the court in ordinary circumstances to treat such transactions as null.” (*Secretary of State for Business Innovation And Skills v PAG Management Services Ltd* [2015] EWHC 2404 (Ch).)

SHAMEFUL. A correct newspaper report headed “shameful conduct” is libel, though the report itself be protected (*Clement v Lewis*, 3 B. & Ald. 702).

SHAPE. “Shape or configuration” of an article of manufacture (preamble to s.2, Copyright and Designs Act 1843 (c.65)) (see DESIGN): see *Millingen v Picken*, 14 L.J.C.P. 254; *Rogers v Driver*, 16 Q.B. 102; *Windover v Smith*, 11 W.R. 323; *Margetson v Wright*, 2 D.G. & S. 420; *Moody v Tree*, 40 W.R. 558. See PATTERN. See also *Walker v Falkirk Iron Co*, 4 Pat. Cas. 390; *Re Clarke* [1896] 2 Ch. 38, cited NEW DESIGN; see also ORIGINAL. See Registered Designs Act (c.88) s.1(3).

SHARE (COMPANY). Stat. Def., Companies Act 1985 (c.6) s.744; Income and Corporation Taxes Act 1988 (c.48) s.229; Companies Act 1989 (c.40) s.22; “includes stock” (Atomic Energy Authority Act 1995 (c.37) s.13(1)).

Stat. Def., “means share in the capital of a company, and includes stock” (s.78 of the Enterprise Act 2002 (c.40)).

Stat. Def., including stock and securities, s.5(2) of the Social Security Contributions (Share Options) Act 2001 (c.20).

Stat. Def., “‘Shares’ includes stock and the reference to shares in a company includes a reference to securities issued by a company” (Finance Act 2003 (c.14) s.53(3)).

Stat. Def., “share in the company’s share capital” (Companies Act 2006 s.540; see also s.1161(2)).

See BONUS SHARES.

SHARE (PORTION). “‘Share’, prima facie, would not apply to real estate” (per Turner V.C., *Stokes v Salomons*, 20 L.J. Ch. 343). See also *Re Woods* (deceased) [1941] St. R. Qd. 129.

Where there is a testamentary gift to two or more, and the will speaks of the "share" of either, a tenancy in common is created (*Gnat v Laurence*, Wight. 395; *Ive v King*, 21 L.J. Ch. 560; *Hogben v Neale*, L.R. 11 Eq. 48; see *Bennett v Houldsworth*, 55 S.J. 270, cited TENANT IN COMMON; see Law of Property Act 1925 (c.20) ss.34–36). So, a bequest in shares to be appointed by a person who is not named, or who fails to appoint, creates a tenancy in common in equal shares (1 Jarm. (8th edn) 477, citing *Robinson v Wheelwright*, 21 Bea. 214; *Salisbury v Denton*, 26 L.J. Ch. 851). The words "in equal shares" signify a tenancy in common (*Re Davies* [1950] 1 All E.R. 120).

A substitutional bequest of a legatee's "share" will not take effect if the legatee dies in the testator's lifetime, because in that case the legatee could not take a share (*Re Roberts*, *Tarleton v Bruton*, 27 Ch. D. 346; affirmed 30 Ch. D. 234, following *Stewart v Jones*, 3 D.G. & J. 532, and dissenting from *Unsworth v Speakman*, 4 Ch. D. 620). But would this be so if the legatee were a child of the testator, leaving issue living at testator's death? See s.33 of the Wills Act 1837 (c.26). Observe also that *Re Roberts* and *Stewart v Jones* were distinguished in *Re Pinhorn* [1894] 2 Ch. 276, which last case was followed in *Re Powell* [1900] 2 Ch. 525; *Re Roberts*, *Re Pinhorn* and *Re Powell* were considered in *Re Whitmore* [1902] 2 Ch. 66. See also *Re Sheppard*, 1 K. & J. 269, cited SHALL; *Neatherway v Fry*, 23 L.J. Ch. 222; 1 Jarm. (8th edn) 442; *Re Currie* [1910] 1 Ch. 329; cp. EXECUTOR.

Where a class of beneficiaries under a will is to be ascertained at the testator's death (or, semble, at any other definite time), but the period of distribution is postponed to a later time, a substitutional gift of the "shares" of deceased beneficiaries applies, prima facie, only to beneficiaries who become members of the class and die before the period of distribution (per North J., *Re Hannam* [1897] 2 Ch. 39; vindicating *Thornhill v Thornhill*, 4 Mad. 377, and the opinion of Romilly M.R., in *Ive v King*, above, and in *King v Cleaveland* (No.1), 28 L.J. Ch. 74; and distinguishing *Smith v Smith*, 6 L.J. Ch. 175, *Collins v Johnson*, 4 L.J. Ch. 226, fn., *Jones v Frewin*, 12 W.R. 369, and *Habergham v Ridehalgh*, L.R. 9 Eq. 395).

"Share of residue": a forfeited share of the fee of certain residue assessed to the remaining residuary legatees and did not fall into intestacy (*Watson's Trustees v Watson* (1961) S.L.T. (Notes) 53).

As to the value of the word "share", in a substitutionary bequest to the issue of a deceased member of a class, for the purpose of avoiding the rule in *Christopherson v Naylor* (1 Mer. 320; 2 Jarm. (8th edn) 1313 et seq.), i.e. that persons claiming as substitutionary legatees must point out the original legatee in whose place they demand to stand, and such original legatee must have been living at the date of the will, e.g. under a gift to children with a substitution of their issue of any as "shall happen to die in my lifetime", only the issue of the children living at the date of the will can claim: see *Re Smith* (in note to *Re Sibley*), 5 Ch. D. 494; see on this case *Re Webster*, 23 Ch. D. 737. But *Re Smith* was not followed by Stirling J., in *Re Chinery* (39 Ch. D. 614), nor by the Court of Appeal in *Re Musther* (43 Ch. D. 569), nor by North J. in *Re Brown* (58 L.J. Ch. 420); *Re Wood* [1894] 3 Ch. 381; *Re Schofield* [1918] 2 Ch. 64; *Re Ward* [1920] 1 Ch. 334. See Law of Property Act 1925 (c.20) ss.34–36.

The "share" of a residuary legatee consists of what remains after all equities between him and the estate have been settled (*Willes v Greenhill*, 29 Bea. 376).

“Share” does not carry an accruing share (Wms. Ex. (12th edn) 786–7; *Re Lybbe, Kildahl v Bowker* [1954] 1 W.L.R. 573) unless aided by the context (3 Jarm., (8th edn), 1976, 1977); but “it seems that ‘share and interest’ will carry accrued shares *proprio vigore*” (3 Jarm., 1978), e.g. an assignment of “all the part, share and interest” of A in a reversionary bequest, carried an accrued share (*Re Lawrence*, 45 S.J. 78). See further ACCRUE.

“Share or interest appointed to him . . . or his issue”: in a hotchpot clause, was held not to include a contingent interest appointed to issue; nor a contingent general power of appointment given in certain events by the appointment (*Re Gordon* [1942] Ch. 131).

As to the meaning of “shares” where a power authorises an appointment “in such shares as my cousin shall in his discretion think fit or proper”, see *Re Hughes* [1921] 2 Ch. 208.

“Share” may be used in the sense of connoting the specific property bequeathed to the person spoken of, and not as part of something to be divided: see *Re Purves*, 35 Sc. L.R. 852.

“All share”: see *Fleming v M’Culloch*, 29 Sc. L.R. 645, cited ALL.

A bequest of a “share, right, and interest” in the GOODWILL of a partnership, and in its real and personal estate, does not pass a debt due to the testator from the partnership (*Re Beard, Simpson v Beard*, 57 L.J. Ch. 887; distinguished *Re Barfield*, 84 L.T. 28).

To “share” a room in a dwelling-house it is not necessary to share in the same sense or on an equal basis (*Baker v Turner* [1950] A.C. 401). See also *Rogers v Hyde* [1951] 2 K.B. 923; *Hayward v Marshall* [1952] 2 Q.B. 89.

A sharing of accommodation whereby a house was not “Let as a separate dwelling” (Rent and Mortgage Interest (Restrictions) Act 1920 (c.17) s.12(2)) had to involve the right of simultaneous use of a living room in such a manner that the privacy of the landlord or tenant was invaded (per Viscount Simonds, *Goodrich v Paisner* [1957] A.C. 65).

A covenant against sharing possession prevents conversion of a tenancy to a single tenant into, in effect, a joint tenancy (*Akici v LR Butlin Ltd* [2005] EWCA Civ 1296).

SHARE AND SHARE ALIKE. The phrase “‘share and share alike’ has the same meaning as ‘equally to be divided’” (Sug. Pow. (8th edn), 656, citing *Phillips v Garth*, 3 Bro. C.C. 64; *Elmsley v Young*, 2 My. & K. 780; per Lord Moncreiff, *Re Stirling*, 36 Sc. L.R. 200), and the beneficiaries take as tenants in common (*Rudge v Barker*, Ca. t. Talb. 124; *Heathe v Heather*, 2 Atk. 122; *Perry v Woods*, 3 Ves. 204 a; *Ashford v Haines*, 21 L.J. Ch. 496; 3 Jarm. (8th edn), 1794). See ALIKE; EQUALLY; LAPSE.

Accordingly, this phrase, as a context, will control such words as “legal representatives” to mean next of kin (*King v Cleaveland*, 28 L.J. Ch. 835, cited LEGAL REPRESENTATIVES).

But this phrase may, like “equally”, be controlled by a strong context to create a joint tenancy (*Armstrong v Eldridge*, 3 Bro. C.C. 215, 216; *Re Barbour* [1967] Qd. R. 10).

There may be a tenancy in common as regards the persons designated, but a joint tenancy as between substitutionary issue; thus, a gift to “sons and daughters who shall be then living and the issue of any then dead (such issue standing *in loco parentis*), share and share alike”, was held by North J. to be a tenancy in common as between the

sons and daughters and issue, but that the issue, as between themselves and as regards the share they took, were joint tenants, there being no words of severance as between them (*Re Yates* [1891] 3 Ch. 53).

See RELATIONS.

SHARE CAPITAL. See ORDINARY SHARE CAPITAL.

SHARED ACCOMMODATION. A landlord and tenant who shared a kitchen resided together so as to disentitle the tenant from receiving housing benefit under the Housing Benefit (General) Regulations 1987 (SI 1987/1971) reg.3 (*Thamesdown BC v Goonery (James)*, February 13, 1995, CA).

SHARED OWNERSHIP LEASE. Stat. Def., Prevention of Social Housing Fraud Act 2013 s.11.

SHARED RISK SCHEME. Stat. Def., Pension Schemes Act (Northern Ireland) 2016 s.3.

Stat. Def., Pension Schemes Act 2015.

SHAREHOLDER. "Shareholder", in Joint Stock Companies Act 1844 (c.110): see *Bailey v Universal Provident Association*, 26 L.J.C.P. 87; *Wilkinson v Anglo-Californian Co*, 18 Q.B. 728.

In Companies Clauses Consolidation Acts 1845, "shareholder" meant "share-holder, proprietor, or member of the company; and, in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation" (c.16) s.3, (c.17) s.3. See thereon and for a comparison between "shareholder" and "subscriber", *Galvanized Iron Co v Westoby*, 8 Ex. 17; *Waterford Railway v Pidcock*, 8 Ex. 279.

In Companies Act 1862 (c.89), "shareholder" "only meant the person who held the shares by having his name on the register" (per Chitty J., *Re Wala Wynaad Mining Co*, 21 Ch. D. 849). See further *Portal v Emmens*, 1 C.P.D. 664; *Kipling v Todd*, 3 C.P.D. 350; *Burke v Lechmere*, L.R. 6 Q.B. 297.

As regards a requirement that a PROXY must be a "shareholder", a person is a "shareholder" if he is so when the proxy is lodged and continues so when he acts upon it, although he was not so when the proxy was signed (*Bombay-Burmah Trading Co v Shroff* [1905] A.C. 213). See Companies Act 1948 (c.38) Sch.1.

"The shareholders" (Companies (Consolidation) Act 1908 (c.69) s.40(1)), amongst whom a return of capital might be distributed from accumulated profits, did not necessarily mean all the shareholders; the distribution might be amongst a selected class of shareholders: see *Neale v Birmingham Tramways Co* [1910] 2 Ch. 464. Cp. Companies Act 1948 (above) s.61.

The executors of a deceased shareholder are (in the absence of regulations to the contrary) entitled to be registered as shareholders simpliciter and in any order they choose: see *Re Saunders & Co* [1908] 1 Ch. 415.

See HOLDING; IN HIS OWN RIGHT; MAJORITY; cp. STOCKHOLDER.

SHARES. "2. 'Shares' in clause 3.1.1 is defined as meaning:

'all shares (if any) specified in Schedule 1 (Shares), and also all other stocks, shares, debentures, bonds, warrants, coupons or other securities now or in the future owned by the Chargor in Corporal from time to time or any in which it has an interest.'

3. The particular issue which divides the parties is whether this definition encompasses the rights of Fons under two shareholder loan agreements dated 17th October 2007 and 15th February 2008 ('the SLAs') under which Fons made unsecured loans to a company, Corporal Limited ('Corporal'), in which it held both ordinary and

preference shares. The loan under the first SLA was £563,500 and Fons was the sole lender. Under the second SLA, BG Holding EHF ('Baugur') and Fons acted as joint lenders and advanced £1.5m in proportion to their respective shareholdings in Corporal. Fons provided 35 per cent of the loan. As in the case of the first SLA, the loan was unsecured. . . .

19. In terms of shedding any further light on the scope and meaning of 'Shares', clause 3.1.3 is therefore of no assistance. But the definition of 'Distribution Rights' does at least confirm that 'Shares' was intended to include assets which are capable of generating 'income paid or payable' and 'rights, benefits and advantages' other than dividends or further derivative share issues. Although this does not go as far as to provide a clear identification of whether the SLAs are within the type of assets which are included within the definition of 'Shares', it does at least confirm that they are not certainly excluded. The definition extends to 'debentures, bonds, warrants, coupons or other securities' which are income producing. If the SLAs can as a matter of ordinary language properly be treated as falling within one or more of those descriptions, there is no contra-indication in clause 3.1 to suggest that they should be given a narrower meaning. . . . The words 'or other securities' appear at the end of a list of items all of which can loosely be described as investments. Clause 1.2.6 of the Charge confirms that the plural is to include the singular and it is not therefore possible to exclude the SLAs from being 'debentures' on the basis that they were not part of a series or that they did not include security in the form of a charge. What they did represent was relatively long-term loan capital for Corporal not repayable before the company's principal loan facility with RBS. From Fons's point of view this could reasonably be regarded and described as an investment in Corporal secured by the terms of the SLAs.

44. Armed with this knowledge, I can see no reason why the reasonable observer should regard the reference to 'other securities' as limiting 'debentures' to a meaning which would exclude the SLAs in this case. Once it was clear from a reading of the Charge that they did not have to include a charge over Corporal's assets he would, I think, have read 'debentures' as having its ordinary meaning of an acknowledgement of debt recorded in a written document. The judge has not suggested any alternative meaning which would have been obvious from the admissible background." (*Fons Hf v Corporal Ltd* [2014] EWCA Civ 304.)

See SHARE; STOCK; STOCKS.

SHARP. To charge a man with "sharp practice" is only an expression of opinion and is not defamatory, if based on a state of facts truly set forth (per Lord M'Laren, *Archer v Ritchie*, 28 Sc. L.R. 547, cited *CROOKED*, approved in *Bruce v Ross*, 39 Sc. L.R. 130, cited *CRUEL*; but see *Kincairney L.O.*, *M'Kechie v Blackwood*, 40 Sc. L.R. 23, cited *DELICACY*).

SHAW. See GRAVA.

SHED. Arson of "hovel, shed, or fold" (Burning of Farm Buildings Act 1844 (c.62) s.1): a "shed", there, connoted its popular meaning of a temporary building for stowing away things (*R. v Amos*, 20 L.J.M.C. 103).

SHEEPHEAVES. "Small plots of pasture often in the middle of a waste . . . the soil of which may or may not be in the lord, but the pasture is certainly a private property, and is leased and sold as such" (Cooke, Inclosure Acts 44).

SHEEPWALK. A conveyance of farms and lands "together with the sheepwalks thereto belonging", described in a schedule and delineated for the purpose of

identification on a plan, only passed grazing rights and did not operate to confer a fee simple estate in the land described (*Wynn v Jones (Antony) and Manor House Estate* (1958) 172 E.G. 859). See FOLDCOURSE. See further *Huddleston v Woodroffe*, 2 Rolls 61.

SHEER. Stat. Def., Merchant Shipping (Conventions) Act 1914 (c.50) art.V.

SHEET OF MUSIC. See COPY.

SHEFFIELD. “Sheffield marks” on cutlery: see Trade Marks Act 1938 (c.22) s.38 and Sch.2.

SHELL FISH. Semble, that the right in the public to take shell fish on the sea shore does not include a right to take away shells which are thrown upon the sea shore (*Bagott v Orr*, 2 B. & P. 472).

Stat. Def., Sea Fisheries Regulation Act 1966 (c.38) s.20; Sea Fisheries (Shell-fish) Act 1967 (c.83) s.22; Sea Fish (Conservation) Act 1967 (c.84) s.22; Import of Live Fish (England and Wales) Act 1980 (c.27) s.4; Fisheries Act 1981 (c.29) s.44; Diseases of Fish Act 1983 (c.30) s.7; Food and Environment Protection Act 1985 (c.48) s.24; Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998 (SI 1998/994) reg.2(1).

Stat. Def., “means crustaceans and molluscs of any kind, and includes any part of a shellfish and any (or any part of any) brood, ware, halfware or spat of shellfish, and any spawn of shellfish, and the shell, or any part of the shell, of a shellfish” (Gangmasters (Licensing) Act 2004 (c.11) s.3(4)).

Stat. Def., “includes crustaceans and molluscs of any kind, and includes any brood, ware, half-ware, spat or spawn of shellfish” (Aquaculture and Fisheries (Scotland) Act 2007 s.12).

Stat. Def., Marine and Coastal Access Act 2009 s.186 (includes crustaceans and molluscs of any kind).

See SEA FISH; FISH.

SHELLFISH FARMING. Stat. Def., Aquaculture and Fisheries (Scotland) Act 2007 s.12.

Stat. Def., “the cultivation or propagation of shellfish with a view to their sale or their transfer to other waters or land; but only where such activity is required to be authorised as an aquaculture production business under regulation 6 of the Aquatic Animal Health (Scotland) Regulations 2009 (S.S.I. 2009/85)” (Aquaculture and Fisheries (Scotland) Act 2013 s.63).

SHELTER. For the meaning of the word “shelter” in the phrase “shelters not more than 12 feet high for the accommodation and convenience of the public”, used in a deed conveying land to a corporation, see *Stourcliff Estates Co Ltd v Bournemouth Corp* [1910] 2 Ch. 12.

SHERIFF. See hereon Co. Litt. 109B, 168 a; 1 Bl. Com. 339, 4 Bl. Com. 292; Jacob.

“Sheriff” (Bankruptcy Act 1883 (c.52) s.168) included “any officer charged with the execution of a writ or other process”, i.e. the officer analogous to the sheriff; and therefore when the serjeant-at-mace, having a levy warrant to execute from the lord mayor’s court, found an officer in possession under a fieri facias, and (according to custom) entrusted that officer with the warrant to realise the amount leviable thereunder, the serjeant-at-mace was the officer to be served with notice under s.46(2) of the Bankruptcy Act 1883, above (*Ex p. Warren, Re Holland*, 15 Q.B.D. 48). That latter section was replaced by s.11 of the Bankruptcy Act 1890 (c.71), under subs.2 of

SHIFTING

which neither the bailiff who levied nor the man in possession was the “sheriff” within the above definition, for neither was “charged with the execution” of the fieri facias (*Bellyse v M’Ginn* [1891] 2 Q.B. 227). See Bankruptcy Act of 1914 (c.59) s.167.

SHIFTING CLAUSE. See hereon Butler’s note to Co. Litt. 327A; Vaizey, 1262; *Fleeming v Howden*, L.R. 1 Sc. & D. App. 372; *Buckhurst Peerage*, 2 App. Cas. 1: such a clause is to be construed, “if not strictly, at all events not so as to carry it beyond the purpose for which it was designed” (per Turner L.J., *Langdale v Briggs*, 26 L.J. Ch. 27; see further *Hearle v Hicks*, 8 Bing. 475; *Leslie v Rothes* [1894] 2 Ch. 499). Cp. FORFEITURE.

SHIFTING LIEN. See IN OR UPON; see also LIEN.

SHIFTING USE. See SPRINGING.

SHIP. Stat. Def., Aviation and Maritime Security Act 1990 (c.31) s.17.

“Sailing ship”: Stat. Def., Merchant Shipping (Fire Protection: Small Ships) Regulations 1998 (SI 1998/1011) reg.1(2).

“Ship includes every description of vessel used in navigation” (Merchant Shipping Act 1995 (c.21) s.313(1)).

The fact that some jet-skis are registered as ships is not necessarily determinative of the question whether they are ships for all purposes of the Merchant Shipping Act 1995 (*R. v Goodwin* [2005] EWCA Crim 3184).

Stat. Def., “includes every description of vessel used in navigation” (Railways and Transport Safety Act 2003 (c.20) s.89(1)(a)).

“Arrived ship”: see ARRIVE.

“Ship lost or not lost”: see LOST OR NOT LOST.

“Ship stranded, sunk, or burnt”: see BURN; STRANDING.

“Ship trading”: see TRADING.

“British ship”; “United Kingdom ship”: Stat. Def., Merchant Shipping Act 1995 (c.21) s.1.

See BRITISH SHIP; COASTING VESSEL; COLLISION; COMMAND; DISBURSEMENTS; EMIGRANT; FOREIGN; GABBERT; GOOD SHIP; HOME-TRADE SHIP; PASSENGER SHIP; SEA-GOING; SHIPS AND VESSELS; STEAMSHIP; UNSAFE; VESSEL.

SHIP (TO). Dues on timber “shipped or unshipped within the harbour or river”: held, that to attach a tow-rope to a log of timber, or a number of logs loosely connected, at one of the ends for the purpose of towing, is not to “ship” the timber; and that to cast off the tow-rope is not to “unship” it; query, whether a raft of logs so constructed as to be capable of being navigated can be said to be “unshipped” when, on reaching its destination, it is taken to pieces and landed (*Clyde Navigation v Laird*, 8 App. Cas. 658).

See SHIPPED; UNSHIPPING.

SHIP DAMAGE. Ship damage is only such damage as happens by the insufficiency of the ship, or the neglect of those who have charge of her (*East India Co v Tod*, 1 Brown P.C. 405).

SHIP MONEY. “Ship money” (Ship Money Act 1640 (c.14) s.2) was an imposition charged on the ports, towns, cities, boroughs, and counties of this realm to provide and furnish ships for the King’s service (preamble to the 1640 Act). In *R. v Hampden* (3 State Trials, 825) it was decided “that when the good and safety of the kingdom in generall is concerned and the whole kingdom in danger, the King might by writ under the Great Seale of England command all the subjects of this his kingdom at their charge to provide and furnish such number of ships with men victuals and munition,

and for such time as the King should thinke fit, for the defence and safeguard of the kingdome from such danger and perill, and that by law the King might compell the doing thereof in case of refusall or refractarinesse; and that the King is the sole judge both of the danger and when and how the same is to be prevented and avoided" (preamble to the Ship Money Act 1640 (c.14)); for "the dominion of the sea, as it is an antient and undoubted right of the Crown of England, so it is the best security of the land; it is impregnable so long as the sea is well guarded . . . The wooden walls are the best walls of this kingdom" (per *Coventry L.K.*, *R. v Hampden*, 3 State Trials, 837, 838). But that decision and the prior extrajudicial opinions "were and are contrary to and against the laws and statutes of this realm, the right of property, the libertie of the subjects, former resolutions in Parliament, and the Petition of Right made in the third yeare of the reign of his Majestie that now is" (1640 Act s.2).

SHIP PAPERS. Stat. Def., Naval Prize Act 1864 (c.26) s.2.

See SHIPPING DOCUMENTS.

SHIPMENT. Goods sold "for shipment" to a named place means a real shipment; therefore, where alkali was sold "for shipment to France", and the buyers directed their carrying vessel to touch at Treport but to carry on the cargo to London, that was merely going through the form of a shipment to France, and was a breach of the contract (*Berk v Day*, 13 T.L.R. 475).

"On shipment": see *Harrison v Hamel & Horley Ltd* [1922] 2 A.C. 36; *Ethel Radcliffe SS Co v Barnett Ltd*, 42 T.L.R. 385.

The word "shipment", as used in a force majeure clause in a charterparty, means no more than the bringing of goods to the shipping port and the loading on board a ship prepared to carry them to the contractual destination (*Tsakiroglou & Co v Noble Thorl* [1960] 2 Q.B. 318).

Where a shipment of goods had, for quota reasons, to be covered by two separate sets of documents there was only one "shipment" under the terms of a c.i.f. contract for sale (*Rosenthal & Sons v Esmail* [1965] 1 W.L.R. 1117).

"Shipment"; "for shipment": see SHIPPED.

Stat. Def., Customs and Excise Act 1952 (c.44) s.307(1); Customs and Excise Management Act 1979 (c.2) s.1.

See STEAMSHIP.

SHIPOWNER. Stat. Def., Merchant Shipping Act 1979 (c.38) Sch.4 art.1(2).

SHIPPED. "To be shipped" means to be put on board (*Bowes v Shand* or *Shand v Bowes*, 2 App. Ca. 455, distinguishing *Alexander v Vanderzee*, L.R. 7 C.P. 530; *Wancke v Wingren*, 58 L.J.Q.B. 519; see hereon *Benj.* (8th edn), 393).

"Shipped again as soon as practicable", in s.9 of the Port of London (Port Rates on Goods) Order 1910, meant shipped in the ordinary course of navigation and not as soon as practicable for the conveniences of the merchant's business: see *Anglo-American Oil Co v Port of London Authority* [1914] 1 K.B. 14.

"Shipped for sale": see *Witham v Vane* [1881] W.N. 79.

"Shipped in apparent good order and condition": see *Brandt v Liverpool, Brazil & River Plate Steam Navigation Co*, 93 L.J.K.B. 646; *Silver v Ocean Steamship Co Ltd* [1930] 1 K.B. 416.

"Shipped in good order and condition": see *The Tromp* [1921] P. 337.

"Shipped in October" (in contract for sale of goods): see *Aaron & Co v Comptoir Wegimont* [1921] 3 K.B. 435.

"Goods shipped": see *Ribble Navigation Co v Hargreaves*, 25 L.J.C.P. 97.

SHIPPER

Freight on “gross weight shipped”: see *London Transport Co v Trechmann* [1904] 1 K.B. 643, cited LUMP.

“Shipped on board”: see RECEIVED.

“Shipped for exportation”: see EXPORTATION.

Stat. Def., Customs and Excise Management Act 1979 (c.2) s.1.

See ON BOARD; TO SHIP.

SHIPPER. The “shipper” of goods “means the man who puts the goods into the vessel, with the intention of taking them to their destination” (per Jervis C.J., *Ribble Navigation Co v Hargreaves*, 25 L.J.C.P. 99).

Stat. Def., Merchant Shipping (Liner Conferences) Act 1982 (c.37) Sch. Ch.1.

SHIPPER’S RISK. See SHIP’S EXPENSE.

SHIPPING “Shipping and unshipping of goods”: see UNSHIPPING.

Stat. Def., Customs and Excise Management Act 1979 (c.2) s.3.

SHIPPING DOCUMENTS. See *Tamvaco v Lucas*, 30 L.J.Q.B. 234; 31 L.J.Q.B. 296; *North of England Oil Cake Co v Archangel Insurance*, L.R. 10 Q.B. 254.

“All the shipping documents”: see *Cederberg v Borries*, 2 T.L.R. 201, cited ALL.

SHIPPING PURPOSES. Stat. Def., Harbours and Passing Tolls, etc. Act 1861 (c.47) s.2.

SHIPPING SERVICES. Stat. Def., Shipping and Trading Interests (Protection) Act 1995 (c.22) s.5(8).

SHIPPING VALUE. In a marine insurance, “shipping value” “includes not only the cost but the premiums of insurance” (per Blackburn J., *Anderson v Morice*, L.R. 10 C.P. 614).

SHIPS AND VESSELS. The Order in Council of February 18, 1854, exempted from compulsory pilotage “ships and vessels trading to ports between Boulogne and the Baltic on their outward passages”; British ships and vessels are alone comprised in that exemption (*The Vesta*, 7 P.D. 240).

See SHIP; VESSEL.

SHIP’S DELIVERY ORDER. “As is explained in *Benjamin’s Sale of Goods* (9th ed, 2014) at para.18-212, the expression ‘delivery order’ is used to describe documents of different kinds: it must be interpreted in its context in the B/L. To my mind, the parties must be taken to be referring to what is commonly called a ‘ship’s delivery order’, an expression used and defined in Carriage of Goods by Sea Act, 1992 s. 1(4). It is an essential feature of such a delivery order that it contains an undertaking given by the carrier who is party to it (or possibly assumed by the carrier through attornment: see *Benjamin*, loc cit, at para.18-216) to a person identified in it to deliver the goods to which it relates to that person. This is required by the statutory definition, and is in accordance with usage before the 1992 Act: see *Krohn & Co v Thegra NV*, [1975] 1 Lloyd’s Rep 146, 154-155. The usual purposes of agreeing that a delivery order, rather than the goods, may be delivered in exchange for a bill of lading is to expedite the performance of contracts and particularly to allow bulk cargoes to be split into parcels, without resorting to the practice (a practice ‘fraught with danger’, per Longmore J in *Noble Resources Ltd v Cavalier Shipping Corp (The “Atlas”)*, [1996] 1 Lloyd’s Rep 642,644) of issuing substitute bills. It is readily understandable that a shipper should agree for practical reasons to this much flexibility in performance. It strikes me as improbable that it would agree to a term whereby the holder of the bill of lading might surrender its rights under it against the carrier without receiving in return either the goods themselves or the benefit of a substitute undertaking from the carrier.

There is no need to interpret the B/L so as to have this improbable effect.” (*Glencore International AG v MSC Mediterranean Shipping Company SA* [2015] EWHC 1989 (Comm).)

SHIP’S EXPENSE. “Goods to be shipped and forwarded at ship’s expense”: see *Stuart v British & African Steam Navigation Co*, 32 L.T. 257; SHIP’S RISK; OWNER’S RISK.

SHIP’S HUSBAND. A ship’s husband—who is frequently but not necessarily a part owner—is an agent “to do what is necessary to enable the ship to prosecute her voyage and earn freight” (*Barker v Highley*, 32 L.J.C.P. 270), and generally to act for the owners “in regard to all the affairs of the ship in the home port” (Story on Agency, s.35). See hereon Carver (9th edn), 23 et seq. As such, a ship’s husband is not a seaman.

SHIP’S PROVISIONS. In a harbour Act exempting from dues “ship’s provisions necessary for the voyage”, bunker coal is not included: see *Fraserburgh Harbour Commissioners v Will* [1916] S.C. 107.

SHIP’S RISK. A charterparty provided that the cargo should be taken from the shore to the ship “at the ship’s risk”; in the course of transit of the cargo from the shore to the ship a portion of the cargo was lost, not by the negligence of the shipowner; the charterparty contained the usual clause excepting loss occasioned by “perils of the sea”; in an action against the shipowner to recover the value of the portion of the cargo lost; held, that the meaning of “at the ship’s risk” was to place the goods during their transit from the shore to the ship in the same position as if they were on board; and that, as the cargo was lost by the perils of the sea, the loss came within that exception, and the action could not be maintained (*Nottebohm v Richter*, 18 Q.B.D. 63).

Cp. “land risk”, under SEA INSURANCE.

See SHIP’S EXPENSE; OWNER’S RISK; RISK.

SHIP’S TACKLE. See *Northmoor SS Co v Harland* [1903] 2 Ir. R. 657, cited TACKLE.

SHIPWRECK. See WRECK.

SHOCK. See NERVOUS.

SHOOT. To “shoot at” a person (Offences Against the Person Act 1828 (c.31) ss.11 and 12) might be done by presenting a loaded gun barrel at him and discharging it by striking the percussion cap on it with some hard substance, e.g. a pocket knife (*R. v Coates*, 6 C. & P. 394).

“Attempt to shoot”: see ATTEMPT.

Cp. LOADED ARM.

SHOOTING. See FOWLING; HUNTING.

SHOP. The word “shop” implies a place where a retail trade is carried on; a blacksmith’s shop is rather a warehouse than a shop (*R. v Chapman*, 7 J.P. 132); so of a carpenter’s shop (per Alderson B., *R. v Sanders*, 9 C. & P. 79).

“In order to constitute a shop, there must be some structure of a more or less permanent character” (per Mellor J., *Hooper v Kenshole*, 2 Q.B.D. 127; see further PLACE); it must be “something more than a mere place for sale; it imports a place for storing also, where the commodities admit of storing” (per Mellor J., *Pope v Whalley*, 34 L.J.M.C. 80; see also *Llandaff Co v Lyndon*, 30 L.J.M.C. 105; *Fearon v Mitchell*, L.R. 7 Q.B. 690; *McHole v Davies*, 1 Q.B.D. 59). These cases were on the phrase “own shop” as used in the exception to s.13 of the Markets and Fairs Clauses Act 1847 (c.14), and they are here referred to thereon; but they seem of general application. A

vessel moored in a canal is not a “shop” within the exception (*Wiltshire v Baker*, 31 L.J.M.C. 10, fn.); but a wooden shed affixed to a house and supported on wooden posts is within it (*Ashworth v Heyworth*, L.R. 4 Q.B. 316; see also *Wiltshire v Willett*, 31 L.J.M.C. 8); a like exception as to a person’s “own shop” within 1000 yards of Southwark Borough Market is contained in Southwark Market Act 1756 (c.31) s.10, on which Neville J. said, “a warehouse which is used to store goods for the purpose of immediate sale may very well be a shop”: see *Haynes v Ford* [1911] 2 Ch. 237. See further MARKET OVERT.

If a photographer takes a private house on the ground floor of which he displays and sells photographs, albums, or such like things, he converts the house into a shop, even though he make no structural alteration in the building (*Wilkinson v Rogers*, 2 D.G.J. & S. 62; see CONVERT).

A stall at a one-day fair was held to lack the necessary degree of permanency required for it to be deemed a “shop” within the meaning of the Shops Act 1950 (c.28) (*Jarmain v Wetherell* (1977) 75 L.G.R. 537). A field on which a member of market stalls had been set up from which different proprietors carried on various businesses was not a “shop” (*Thanet DC v Ninedrive* [1978] 1 All E.R. 703). But stalls at Sunday markets are “shops” for the purposes of the Shops Act 1950 (c.28) (*Barking and Dagenham LBC v Essexplan* (1983) 81 L.G.R. 408).

In the case of a single hereditament consisting of self-contained premises laid out with counters, the whole of those premises constitutes the “shop”. Any particular part of those premises or any particular counter does not of itself constitute a “shop” (*Fine-Fare v Brighton Corp* [1959] 1 W.L.R. 223). An open site used for the sale of caravans was held to be a “shop” for the purposes of the Shops Act 1950 (c.28) (*Warley Caravans v Wakelin* (1968) 66 L.G.R. 534).

A market stall, even if almost permanently stationed in one place, is not a “shop” for the purposes of ss.12 and 17 of the Pharmacy and Medicines Act 1941 (c.42) or s.19(1) of the Shops Act 1912 (c.3) (*Summers v Roberts* [1944] K.B. 106; *Greenwood v Whelan* [1967] 1 Q.B. 396).

Milk supplied from an automatic machine placed outside the door of a shop and fed from a reserve within when the shop was closed was held to be sold from a “shop” within the meaning of Shops Act 1912 (c.3) s.4(1); see *Willesden Urban Council v Morgan* [1915] 1 K.B. 349. See now Shops Act 1950 (c.28) s.1(1). But a stall where games of mixed chance and skill are played on payment of a fee for prizes of chocolates was not a shop within Shops Act 1912 s.19(1), above see *Dennis v Hutchinson* [1922] 1 K.B. 693. Neither was an hotel a shop within this section: see *Gordon Hotels Co v London CC* [1916] 2 K.B. 27, cited SHOP ASSISTANT.

Shops (Sunday Trading Restriction) Act 1936 (c.53) did not include a warehouse where ice-cream was kept, or a tricycle from which it was retailed (*Eldorado Ice-cream Co v Clarke* [1938] 1 K.B. 715). Cp. now Shops Act 1950 (c.28) ss.22, 23. Premises used for hiring video films to members of the public were “shops” for the purposes of the Sunday trading provisions (*Lewis v Rogers*; *Gardner v Duffield* [1984] Crim. L.R. 426).

“A tavern would not come within the definition of ‘shop’”, in an exception from a covenant requiring a property generally to be used for private houses (per Huddleston B., *Coombs v Cook*, Cab. & El. 75; see further *Hall v Box*, 18 W.R. 820; cp. *Savoy Hotel Co v London CC* [1900] 1 Q.B. 665, above, para.(8)).

(Leasehold Property (Temporary Provisions) Act 1951 (c.38) s.20(1).) Premises were not a “shop” if the business carried on was not “wholly or mainly for the purposes of a retail trade or business”; a business in which only a small percentage was retail business was not a shop within the section (*Berthelemy v Neale* [1952] 1 T.L.R. 458). Premises where a builder’s and decorator’s business was carried on were not a “shop” (*M. and F. Frawley v Ve-Ri-Best Manufacturing Co* [1953] 1 Q.B. 318). See also *Warwick v Spencer*, 1 C.L.C. 5504 (clothing cleaners and dyers not a shop); *Deeble v Robinson* [1954] 1 Q.B. 77 (a milk roundsman’s shed used for storing bottles, a refrigerator, etc. not a shop). See RETAIL.

“Shop” (Town and Country Planning (Use Classes) Order 1948 (No.954)), did not include licensed premises where light refreshments were served (*Central Land Board v Saxone Shoe Co* [1956] 1 Q.B. 288). Nor was a basement used as a workshop, or for storing, sorting, dispatching and repairing goods used in the occupier’s shop opposite the basement a shop within art.2(2) of Town and Country Planning (Use Classes) Order 1950 (No.1131) (*Horwitz v Rowson* [1960] 1 W.L.R. 803). A hut, used as an office, on land where wooden portable garden sheds and garages were displayed and sold was a “shop” within the meaning of this article (*Marshall v Nottingham Corp* [1960] 1 W.L.R. 707).

A travel agency was not a “shop” within the meaning of s.74 of the Shops Act 1950 (c.28) (*Erewash BC v Ilkeston Consumer Co-operative Society*, 87 L.G.R. 96).

Stat. Def., “any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods” (Sunday Trading Act 1994 (c.20) Sch.1 para.1).

“Shop premises”: Stat. Def., Offices, Shops and Railway Premises Act 1963 (c.41) s.1(3).

“Open shop”: see KEEP OPEN.

See OFFICE; BEER-HOUSE; RETAIL.

SHOP FRONT. A condition in a letting agreement related to a “shop front”; held, that that phrase was not explainable by another document relating to the same premises (*Doe d. Nash v Birch*, 5 L.J. Ex. 185).

SHOPKEEPER. See MERCHANT.

SHORE. The shore of the sea “is that ground that is between the ordinary highwater and low-water mark. This doth, prima facie and of common right, belong to the King, both in the shore of the sea and in the shore of the arms of the sea” (Hale, *De Jure Maris*, Ch.4). See further Callis, 54; BANK; CREEK; MARETTUM.

“The rule of the civil law was, *Est autem littus maris quatenus hybernus fluctus maximus excurrit*. This is certainly not the doctrine of our law. All the authorities concur in the conclusion that the right (of the Crown to the seashore) is confined to what is covered by ‘ordinary’ tides. By *hybernus fluctus maximus* is clearly meant extraordinary high tides, though, speaking with physical accuracy, the winter tide is not, in general, the highest. Land covered only by these extraordinary tides is not what is meant by the sea shore” (per Cranworth C., *Att-Gen v Chambers*, 23 L.J. Ch. 666). The phrase “ordinary tides”, in this connection, does not include the spring tides at the equinox, although happening in the usual order of nature; it means those tides which are of common occurrence (per Alderson B. and Maule J., *Att-Gen v Chambers*).

“Ordinary tides, or nepe tides” are those “which happen between the full and change of the moon; and this is that which is properly *littus maris*, sometimes called *marettum*, sometimes *warettum*” (Hale, *De Jure Maris*, Ch.6), and the precise meaning of that rule is that the *medium filum* of all tides throughout the year—including the

spring tides and the ordinary equinoctial tides—gives the limit, in the absence of usage, to what is the sea shore (*Att-Gen v Chambers*, above; *Lowe v Govett*, 1 L.J.K.B. 224). See further Hall on the Sea Shore, 8 et seq.

“‘Shore’ denotes that specific portion of the soil by which the sea is confined to certain limits. That term is wholly inapplicable to the grant of a privilege or easement; it, of necessity, comprehends the soil itself. . . . The Crown, by the grant of the ‘sea shore’, would convey not that which at the time of the grant is between the high and low water marks, but that which from time to time shall be between these two termini. Where the grantee has a freehold in that which the Crown grants, his freehold shifts as the sea recedes or encroaches” (per Bayley J., *Scrutton v Brown*, 4 B. & C. 496, 498). The ruling in *Scrutton v Brown* applies to a conveyance between subject and subject (*Mellor v Walmesley* [1905] 2 Ch. 164, cited SEA SHORE). See IMPERCEPTIBLE; INCREASE.

In the absence of evidence to the contrary, the shore is extra-parochial (*R. v Musson*, 27 L.J.M.C. 100). Modern usage is admissible to show that it is parcel of an adjoining manor (*Beaufort v Swansea*, 3 Ex. 413).

“Shore RISK”: see INTERIOR.

See BED; KELP-SHORE; ON SHORE; ON THE SHORE; STRAND.

SHORT CUT. See *Brotherton v Jackson*, 98 L.J.K.B. 76.

SHORT INTEREST. In a marine insurance, “‘short interest’ means no more than a short profit on the cargo to the extent of the whole sum insured” (per Ellenborough C.J., *Eyre v Glover*, 16 East, 220).

SHORT LEASE. Stat. Def., Companies Act 1981 (c.62) Sch.1 para.82; Companies Act 1985 (c.6) Sch.4 para.83 Sch.9 para.34.

Stat. Def., Capital Allowances Act 2001 s.70I inserted by Finance Act 2006 Sch.8 para.7.

SHORT-TERM LEASE. Stat. Def., Corporation Tax Act 2009 s.216.

SHORTHOLD TENANCY. (Housing Act 1988 (c.50) s.34.) A tenancy could only be treated as a protected shorthold tenancy in possession proceedings and s.34 should not be read as excluding from transitional protection a tenancy “which if proceedings for possession under the mandatory shorthold ground had been brought would have been treated as a protected shorthold tenancy” (*Thalmann v Evans* [1996] 8 C.L. 420).

SHOT GUN. Stat. Def., Firearms Act 1968 (c.27) s.1(3)(a).

See FIREARM.

SHOULD. “What rent should be payable” (Agricultural Holdings Act 1948 (c.63) s.8); “should be” is not to be construed “should have been” (*Sclater v Horton* [1954] 2 Q.B. 1).

The expression “should be refused” for the purposes of the Immigration Rules (H.C. 251) para.111 stated a rule fixed subject to the Secretary of State’s discretion outside the rules (*Pearson v Immigration Appeal Tribunal* [1978] Imm.A.R. 212 applied; *R. v Secretary of State for the Home Department, Ex p. Okello* [1995] Imm.A.R. 269).

SHOW. “Tending to show” (Criminal Evidence Act 1898 (c.36) s.1(f)). “To show” in this section is to be construed as “revealed” (*R. v Anderson* [1988] 2 W.L.R. 1017).

In s.233(2) of the Copyright, Designs and Patents Act 1988 a requirement to show innocent acquisition is a requirement to show on the balance of probabilities (*Badge Sales v PMS International Group Ltd* [2004] EWHC 3382, Ch).

“Show his ticket”: see DELIVER; PUBLIC SHOW.

“True it is that the word ‘show’ or ‘shows’ is used in Section 31(1) and (2), but in our judgment it is being used in a neutral way without defining the standard of proof. As Makuwa indicates, in Section 31(1) the word ‘show’ covers both the situation where there is an evidential burden on the applicant and also where he has to prove matters on the balance of probabilities.” (*Sadighpour v R.* [2012] EWCA Crim 2669.)

SHOW A LIGHT. To “show from her stern . . . a white, or flare-up, light”, by a ship which is being overtaken (Regulations for Preventing Collisions at Sea 1897 art.10), connotes that the flashing of a light (a thing done on a sudden) is sufficient; but a fixed light may also be sufficient (per Hannen P., *The Stakesby*, 15 P.D. 166); but see thereon *The Breadalbane*, 7 P.D. 186; *The Pacific*, 9 P.D. 124; and *The Imbro*, 14 P.D. 73; see now art.10 of the Regulations for Preventing Collisions at Sea 1910 (No.1113). If a flash light is used, “one short exhibition is not sufficient for the safety of the vessels; the light should be shown from time to time so long as the vessel in which it is shown continues to be an overtaken one” (per Hannen P., *The Essquibo*, 13 P.D. 53). “Where a fixed light is permissible, care must be taken that it shall not be visible over the space where the side lights can be seen” (Abbott (14th edn), 931, citing *The Main*, 11 P.D. 132, cited OVERTAKEN; *The Imbro*, above; *The Palinurus*, 13 P.D. 14).

SHOW CAUSE. Where a party has to “show cause”, that, by necessary implication, allows the other side to answer (per Brett L.J., *Davis v Spence*, 1 C.P.D. 721; *Girvin v Grepe*, 13 Ch. D. 174; but see this last case for cases to the contrary).

“Cause shown”: see CAUSE; SHOWN.

SHOWMAN. “Showmen’s goods vehicles” (Vehicles (Excise) Act 1971 (c.10) Sch.4) means vehicles used in the entertainment industry, and does not cover travelling commercial exhibitions or sales points (*R. v Department of Transport, Ex p. Lakeland Plastics (Windermere)* [1983] R.T.R. 82).

“Showman’s vehicle” (Goods Vehicles (Operators’ Licences) Regulations (1977 No.1737) para.23). Vehicles used by a company to deliver equipment for travelling showmen were not themselves “showman’s vehicles” for the purposes of this regulation; and the company itself was not, therefore, a “travelling showman” within the meaning of this paragraph (*Bowra v Dann Catering Co* [1982] R.T.R. 120). “Showman’s goods vehicle”; “showman’s vehicle”: Stat. Def., Finance Act 1982 (c.39) Sch.5 para.15.

SHOWN. Prima facie evidence that a child was “not shown” to be unfit to be vaccinated, etc. (Vaccination Act 1867 (c.84)) was given by proving that there had been no notification of the vaccination (*Over v Harwood* [1900] 1 Q.B. 803).

The word “shown” in a conveyance was not a word of limitation (*Wright Davies v Marler* [1995] 10 C.L. 122).

See SHOW CAUSE.

SIBLING. Stat. Def., “means a sibling of the full blood or the half blood” (Presumption of Death Act 2013 s.20).

SI CONTINGAT. See IF.

SICA. “‘Sica, sicha’, a ditch” (Jacob).

SICH. “Is a little current of water which is dry in summer; a water furrow or gutter” (Jacob).

SICKNESS. “Sickness” means disease (per Campbell C.J., *R. v Huddersfield*, 26 L.J.M.C. 171); therefore, pregnancy was not, of itself, “sickness” within Poor Removal Act 1846 (c.66) s.4 (*R. v Huddersfield*, 26 L.J.M.C. 169); but a woman might be “ill” from pregnancy.

SICKNESS

“Incapable of work in consequence of sickness” (Employment Protection (Consolidation) Act 1978 (c.44) Sch.13 para.9(1)(a)). Where an employee retired early for medical reasons and was then, after a period of 10 days, re-employed in a less stressful position, the 10 day gap was held not to be a period where he was incapable of work due to sickness within the meaning of this paragraph, which requires a causal link between the absence from work and the incapacity due to sickness (*Pearson v Kent CC* [1993] I.R.L.R. 165).

“Permanent sickness”: see PERMANENT.

Distinguished from disability: see DISABILITY.

See DISEASE; ILL; ILLNESS; CAUSED BY; UNSOUND MIND.

SICKNESS BENEFIT: See *Von Chamier-Glisczinski v Deutsche Angestellten-Krankenkasse* (C-208/07) [2009] 3 C.M.L.R. 43 ECJ.

SIDE. “No doubt, in a certain context, the word ‘side’ might be so used as to be shown, by that context, to be contra-distinguished from the top, or bottom, or end, of a subject of quadrilateral or any other figure. But for this purpose a determining context is necessary. In the absence of such a context, it is accurate, both in scientific and in ordinary language, to say that a quadrilateral table has four sides. In the (Communion) rubrics not only is there no context to exclude the application of that term to the shorter as well as the longer sides, but the effect of the context is just the reverse” (per Cairns C., delivering judgment of P.C., *Ridsdale v Clifton*, 2 P.D. 341; but see thereon *Read v Lincoln (Bishop)* [1892] A.C. 663, 665, cited NORTH SIDE).

“The side or sides of any carriage-way or cartway” (Highway Act 1864 (c.101) s.51) meant any land forming part of the highway, though not part of the metalled road; but did not include land not part of the highway, though by the side of the road (*Easton v Richmond*, L.R. 7 Q.B. 69). A similar construction was given to “sides” of a turnpike road in Turnpike Roads Act 1828 (c.77) s.5 (*Beckett v Upton*, 25 L.J.Q.B. 70).

To speak of a thing being on the “side” of some other thing, “contemplates some degree of proximity” (per Fry L.J., *Ravensthorpe v Hinchcliffe*, 24 Q.B.D. 168). “It is doubtful, to say no more, whether a building 300 or 400 yards distant from another building can be said to be on one side of it”, within Public Health (Buildings in Streets) Act 1888 (c.52) s.3, which prohibited the bringing forward of a building beyond the front main wall of the house or building “on either side” of it; but a finding by justices that a house 64 feet from another house was on the “side” of that other, would not be interfered with (*Warren v Mustard*, 61 L.J.M.C. 18); yet, semble, a similar decision by a Local Board of Health would be reversed (*R. v Ormesby*, 43 W.R. 96). See also *Att-Gen v Edwards* [1891] 1 Ch. 194; *Anderson v Richards*, 4 L.G.R. 404.

Building “erected on the side of a new street” (Metropolis Management Amendment Act 1862 (c.102) s.85) included a building erected at a corner formed by the junction of an old and a new street, although its main entrance was in the old street (*London CC v Lawrence* [1893] 2 Q.B. 228). See also IN.

“Sides of every . . . working place” (Coal Mines Act 1911 (c.50) s.49; see now Mines and Quarries Act 1954 (c.70) s.48(1)). A coal face is one of the “sides” of the working place within the meaning of these sections (*Gough v National Coal Board* [1959] A.C. 698).

“This side” of: see GIBALTAR.

“Relations on my side”: see RELATIONS.

SIDE-CAR. In order to constitute a "side-car" within reg.7(1)(d) of the Motor-Vehicles (Driving Licences) Regulations 1963 (SI 1963/1026), an attachment must be capable of carrying and not be merely a bare chassis (*Cox v Harrison* [1968] 1 W.L.R. 1907).

A "side-car", such as is necessary to entitle a learner motorcycle driver to carry a passenger under reg.6(1)(d) of the Motor Vehicles (Driving Licences) Regulations 1971 (No.451), is not limited to an attachment for carrying a passenger; an attachment for carrying goods is adequate, and so long as there is such an attachment the regulation would be satisfied even if the passenger was on the pillion (*Keen v Parker* [1976] 1 W.L.R. 74).

SIDE-NOTES. See MARGINAL NOTES.

SIDELINGS. Are "meers betwixt or on the sides of ridges of arable land" (Jacob).

SIDEWAY. See CAUSEWAY.

SIDING. "Siding, or branch railway, not belonging to the company" (Railway and Canal Traffic Act 1894 (c.54) s.4): see *North Staffordshire Railway v Salt Union*, 10 Ry. & Can. Traffic Ca. 161; *Salt Union v North Staffordshire Railway*, 10 Ry. & Can. 179; *Portway v Colne Valley, etc. Railway*, 10 Ry. & Can. 211; *Pidcock v Manchester, Sheffield & Lincolnshire Railway*, 9 Ry. & Can. 45; *Huntington v Lancashire & Yorkshire Railway*, 11 Ry. & Can. Tr. Cas. 237; *Girardot v Great Eastern Railway*, 10 Ry. & Can. Tr. Cas. 244.

Siding "adjacent to and belonging to the mine" within the definition of "mine", in Coal Mines Regulations Act 1887 (c.58), as applied to Workmen's Compensation Act 1897 (c.37): see *Anderson v Lochgelly Iron Co*, 42 Sc. L.R. 147; see also ADJACENT.

A private siding is not part of the "railway" (*Cowan v North British Railway*, 38 Sc. L.R. 514, cited FACILITIES). See also Railways (Private Sidings) Act 1904 (c.19) s.2.

"Siding accommodation", charge for: see *London & North Western Railway v Crooke*, 20 T.L.R. 506. See Railways Act 1921 (c.55) Sch.5 and s.40.

"Wait order siding": see *Midland Railway v Myers* [1908] 2 K.B. 256, cited ACCOMMODATION.

Stat. Def., Railways Act 1921 (c.55) Sch.5.

SIGHT. "Loss of sight in both eyes", in an accident insurance, means totally blind; therefore, where the insured was a one-eyed man when the insurance was effected, and the insurer by himself or his agent knew of that fact, and after the insurance the insured loses by accident the sight of his only eye, he is entitled to recover the amount payable under the policy as on the "loss of sight in both eyes" (*Bawden v London, etc. Assurance* [1892] 2 Q.B. 534).

"In sight of one another" (Regulations for Preventing Collisions at Sea 1897 art.28): see *The Bellanoch* [1907] A.C. 269; *The Corinthian* [1909] P. 260.

See AT SIGHT; PRESENCE.

SIGN. "Door, shutter, trap, platform, shoot, sign, cat-head, crane, hoist, or other apparatus or thing in connection with any building", "so as to project over the surface of any street" (Liverpool Improvement Act 1882 (c. lv) s.36(5)): held, by the deputy stipendiary, to mean a sign of a fairly permanent and fixed character which, on the facts, he held the one in question was not; but he took too narrow a view, and the case was sent back for reconsideration (*Goldstraw v Jones*, 96 L.T. 30). Cp. PROJECTION.

"Signs for regulating traffic" (Road Traffic Act 1930 (c.43) s.49) were signs indicating turnings and "halt", "slow", or "keep left" signs (*Gibbons v Skinner* [1951] 2 K.B. 379).

A trademark can consist of a sign that is not capable of being perceived visually, provided that it can be represented graphically and that certain other conditions are satisfied (*Sieckmann v Deutsches Patent-und Markenamt* [2003] 3 W.L.R. 424, ECJ).

“55. In brief, the description of the mark as including not just the colour purple as a sign, but other signs, in which the colour purple predominates over other colours and other matter, means that the mark described is not ‘a sign.’ There is wrapped up in the verbal description of the mark an unknown number of signs. That does not satisfy the requirement of ‘a sign’ within the meaning of Article 2, as interpreted in the rulings of the CJEU, nor does it satisfy the requirement of the graphic representation of ‘a sign’, because the unknown number of signs means that the representation is not of ‘a sign.’ The mark applied for thus lacks the required clarity, precision, self-containment, durability and objectivity to qualify for registration.” (*Société Des Produits Nestlé SA v Cadbury UK Ltd* [2013] EWCA Civ 1174.)

See SKY SIGN; SUBSCRIBE.

SIGN AND ALLOW. As to the effect of the “signing and allowing” of an assessment by Inland Revenue Commissioners pursuant to Income Tax Act 1952 (c.10) ss.35, 41, see *BP Refinery (Kent) v Kent River Board*; *Same v Lower Medway Internal Drainage Board* [1957] 1 Q.B. 84.

SIGNAL. Stat. Def., “includes—(a) anything comprising speech, music, sounds, visual images or communications or data of any description; and (b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of apparatus” (Communications Act 2003 (c.21) s.32(10)).

SIGNED; SIGNATURE. Speaking generally, a signature is the writing, or otherwise affixing, a person’s name, or a mark to represent his name, by himself or by his authority (*R. v Kent Justices*, L.R. 8 Q.B. 305), with the intention of authenticating a document as being that of, or as binding on, the person whose name or mark is so written or affixed. In *Morton v Copeland* (16 C.B. 535), Maule J. said, “Signature does not, necessarily, mean writing a person’s Christian and surname, but any mark which identifies it as the act of the party”, but the reporter adds in a note, “provided it be proved or admitted to be genuine, and be the accustomed mode of signature of the party”. Without more, “to sign” is not the same as “to subscribe”.

The minute requisite of a signature will vary according to the nature of the documents to which it is affixed, e.g.:

- (a) Deeds;
- (b) Wills;
- (c) Contracts;
- (d) Bills of exchange and promissory notes;
- (e) Solicitors’ bills;
- (f) Electioneering paper;
- (g) Judge’s orders and legal proceedings;
- (h) Office copies;

and “in every case where a statute requires a particular document to be signed by a particular person, it must be a pure question on the construction of the statute whether the signature by an agent is sufficient” (per Bowen L.J., *Re Whitley*, 32 Ch. D. 337).

(a) Deeds. (i) At common law “a deed may be good, albeit the party that doth seal it doth never set his name or his mark to it, so as it be duly sealed and delivered” (Touch.

60). Since the Statute of Frauds (29 Car. 2, c.3), however, it has been a question whether a deed is within its provisions as being an "agreement" and therefore required to be signed. Blackstone thinks it is (2 Com. 306), and herein he is cited and followed by Hilliard in his edition of the Touchstone (fn.2, 56). Mr Preston, on the contrary, thinks that a deed is not within the statute and does not requiring signing (Touch., fn.24, Preston's edn). In *Cooch v Goodman* (2 Q.B. 580) the point was discussed but not decided; and in *Aveline v Whisson* (12 L.J.C.P. 58) the point was conceded in the negative without argument. This view was strengthened in *Cherry v Heming* (19 L.J. Ex. 63), where all the judges (Parke, Alderson, Rolfe, and Platt) gave it as their opinion (obiter) that a deed is not within the statute and does not require signing. Thus the weight of authority is against the necessity of signature to a deed; still, "it would certainly be most unwise to raise the question by leaving any deed sealed and delivered, but not signed" (Wms. R.P. 127). If it should ultimately be held that a deed generally must be signed, then, as also in all those particular cases where signature is expressly required, it would seem that the kind of signature may be the same as that required to wills.

(ii) "It is established, in my judgment, as a general proposition that at common law a person sufficiently 'signs' a document if it is signed in his name and with his authority by somebody else, and in such a case the agent's signature is treated as being that of his principal" (per Romer L.J. in *London CC v Vitamins Ltd* [1955] 2 Q.B. 218).

b) Wills. (i) Wills Act 1837 (c.26) s.9 requires that all wills "shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction". Perhaps the most common error as regards the requisites of this signature is the tracing a former signature with a dry pen. This generally happens where there have been alterations made in a will since its execution and where accordingly a re-execution of the will is necessary, but "it cannot be too well understood that tracing with a dry pen is not equivalent to a signature" (per Cresswell J.O., *Re Cunningham*, 29 L.J.P.M. & A. 71). It will be observed that a dry pen adds nothing to a document, makes no mark or sign upon it; hence its inutility. But when there is a mark or sign (or, semble, a seal: per Bayley B., *Doe d. Phillips v Evans*, 2 L.J. Ex. 193; but see *Re Byrd*, below) made to a will, which mark or sign was intended by the testator to be, or to stand for, his name, then the court is not nice as to the kind of mark or sign which is employed. "Whether the mark is made by a pen, or some other instrument cannot make any difference"; and therefore a stamped impression of a testator's signature is sufficient (*Jenkyns v Gaisford*, 32 L.J.P.M. & A. 122). The mark of the testator (and, it seems, whether he can or cannot write) is a sufficient signature even though his name is not placed against the mark (*Re Field*, 3 Curt. 752; *Baker v Dening*, 8 A. & E. 94; and, particularly, *Re Bryce*, 2 Curt. 325); or even where a wrong name is written against the mark, for in that case "the execution is perfect as soon as the mark is affixed", and therefore, "it matters not what someone else may have written against the mark" (per Cresswell J.O., *Re Douse*, 31 L.J.P.M. & A. 172; see also *Re Clarke*, 27 L.J.P.M. & A. 18). So, if a testator, or witness, writes a name, not his or her real name, but intended to represent that real name, the signature will be good. Thus, where a woman whose name was "Glover" signed her name as "Reed" (that being the name of her deceased first husband) the signature was held good (*Re Glover*, 11 Jur. 1022); and signature in an assumed name is good (*Re Redding*, 14 Jur. 1052). But errors of this kind appear only to be good when done by mistake; and where attesting witness signed

her husband's name instead of her own, it having been desired that the will should have the appearance of being attested by the husband, the signature was held invalid (*Pryor v Pryor*, 29 L.J.P.M. & A. 114; *Re Leverington*, 11 P.D. 80). See also SUBSCRIBE; PRESENCE.

(ii) Signature by initials is good (*Re Wingrove*, 15 Jur. 91; *Re Savory*, 15 Jur. 1042; *Re Hinds*, 16 15 Jur. 1161). Affixing a seal, it has been said, is not a signing (*Re Byrd*, 3 Curt. 117; see also 1 Jarm. (8th edn), 127; but see per Bayley B., *Doe d. Phillips v Evans*, above). The hand of a testator may be guided if he is unable from illness to do without that aid (*Wilson v Beddard*, 12 Sim. 28). See also 1 Jarm. (8th edn), 126 et seq.; Wms. Exs. (12th edn), 40 et seq.; Wms. Exs. (13th edn), 93; and as to what is an acknowledgment of a testator's signature to a will, see ACKNOWLEDGMENT. A testatrix wrote her initials and half her surname but was unable to complete because of the action of a drug which made her unconscious; this was a sufficient signature (*Re Chalcraft* [1948] P. 222).

(c) Contracts. (i) At common law a contract did not require any writing; but by the Statute of Frauds a great many contracts must be in writing and "signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised", a provision which, in s.17 of the Statute, is replaced in similar terms by Sale of Goods Act 1893 (c.71) s.4. Observe, first, who is to sign—"the party to be charged"; the signature of the person seeking to enforce the contract is not necessary (*Laythorp v Bryant*, 2 Bing. N.C. 735); therefore, a written signed proposal with the necessary details to support a contract, accepted by word of mouth, may be enforced by the acceptor against the proposer, though an agreement based on the proposal could not be enforced against such an acceptor (*Warner v Willington*, 25 L.J. Ch. 662; *Smith v Neale*, 2 C.B.N.S. 67; *Liverpool Banking Co v Eccles*, 28 L.J. Ex. 122; *Peek v North Staffordshire Railway*, 29 L.J.Q.B. 97). As to the character of the requisite signature to a contract: in the first place, all that has been said as to the signature of a will by a stamped impression, or a mark, or initials, or (it seems) a wrong name, is equally applicable to the signature of a contract under the Statute of Frauds (see cases collected Add. C. (11th edn), 39; but "whether a signature by initials would suffice, seems not to have been decided expressly", Benj. (8th edn), 263—see as to this *Hill v Hill* [1947] Ch. 231). But in a contract, the latitude as to the manner of signing is carried much farther than in a will. The signature may appear at the top or bottom or in the body of the contract (*Knight v Crockford*, 1 Esp. 189; *Sims v Landray* [1894] 2 Ch. 318); and a learned judge has even stated the rule thus widely: "If the name appears on the contract and be written by the party to be bound, or by his authority, and issued or accepted by him, or intended by him as the memorandum of a contract, that is sufficient" (per Blackburn J., *Durrell v Evans*, 31 L.J. Ex. 345, where the previous cases hereon were collected; but see thereon *Murphy v Boese*, L.R. 10 Ex. 126). Thus, in *Schneider v Norris* (2 M. & S. 286, following *Saunderson v Jackson*, 2 B. & P. 238), the name of the seller was printed on a bill of parcels, but he wrote thereon the name of the purchaser, and that was held to be an adoption by the seller of his own printed name, and a signature within the Statute of Frauds. Assuming that case to be the law then, a fortiori, tracing a former signature with a dry pen, though not a sufficient signing of a will, would be a sufficient signature to a contract. *Schneider v Norris* has, however, not passed entirely unquestioned, for in *Jenkyns v Gaisford*, (above), Cresswell J.O. said, "I always had some scruple about that case". Still, *Schneider v Norris* was repeatedly cited as an authority in *Durrell v Evans*, (above),

and was followed in *Tourret v Cripps*, 48 L.J. Ch. 567; and in *Evans v Hoare* [1892] 1 Q.B. 593; see also *Jones v Victoria Dock Co*, 2 Q.B.D. 314; *Hucklesby v Hook* [1900] W.N. 45; *Bleakley v Smith*, 11 Sim. 150; Benj. (11th edn), Ch.7; NOTE.

(ii) Generally speaking, all contractual documents may be signed by a duly authorised agent (per Blackburn J., *R. v Kent Justices*, L.R. 8 Q.B. 305; per Bowen L.J., *Re Whitley*, above; *Browne v Kinsella*, 24 L.R. Ir. 98). See also *Wilson & Sons v Pike* [1949] 1 K.B. 176; *Leeman v Stocks* [1951] Ch. 941; *Basma v Weekes* [1950] A.C. 441. The signature on behalf of a company of its duly authorised agent acting within the scope of his authority was the signature of the company for the purpose of s.6 of the Statute of Frauds Amendment Act 1828 (*UBAF v European American Banking Corporation* [1984] 2 W.L.R. 508). See also para.(2)(a)(ii) above.

(iii) An auctioneer is agent to sign for vendor and purchaser, within the Statute of Frauds (*Emmerson v Heelis*, 2 Taunt. 38; *Glengall v Barnard*, 6 L.J. Ch. 25; *Sims v Landray*, above—on which see *Potter v Peters*, 64 L.J. Ch. 359, 360); but the authority does not extend to the clerk of the auctioneer, and even the auctioneer must sign not later than at the end of the auction (*Bell v Balls* [1897] 1 Ch. 663). See also *Van Praagh v Everidge* [1903] 1 Ch. 434; *Wallace v Roe* [1903] 1 Ir. R. 32. The purchaser at an auction cannot compel the auctioneer to sign for the vendor a memorandum of the sale (*Macmanus v Branson*, 50 S.J. 508). See Law of Property Act 1925 (c.20) ss.53 and 54. So, documents under Companies Act 1862 (c.89) (see Companies Act 1948 (c.38)) do not need a personal signature, and therefore a memorandum of association may be signed by an agent, who need not be authorised by deed (*Re Whitley*, above). So, of a building society's instrument of dissolution (*Dennison v Jeffs* [1896] 1 Ch. 611; disapproving *Second Edinburgh Society v Aitken*, 29 Sc. L.R. 456). See further IN WRITING.

(iv) But an acknowledgment under Lord Tenterden's Act (Statute of Frauds Amendment Act 1828 (c.14)) to take a case out of the Statute of Limitations, had to be signed by the person himself (*Hyde v Johnson*, 5 L.J.C.P. 291; *Williams v Mason*, 21 W.R. 386); see also HIMSELF; HIS HAND; OWN CONSENT; *Toms v Cumming*, below, under Electioneering Papers, sub. para.(f); *Hirst v West Riding Union Banking Co* [1901] 2 K.B. 560, cited PERSON.

(v) As to when the individual signature of a partner will bind his firm, see *Brogden v Metropolitan Railway*, 2 App. Cas. 666.

(d) Bills of exchange and promissory notes. (i) "No person is liable as drawer, indorser, or acceptor, of a bill who has not signed it as such: provided that—

"(1) where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name;

"(2) the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm"

(Bills of Exchange Act 1882 (c.61) s.23); and so of the maker or indorser of a promissory note (s.89).

"(1) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

"(2) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal" (1882 Act s.91).

(ii) Where a cheque drawn on a partnership bank account bore the printed name of the partnership and the signature of one partner there was a sufficient "signature" on the cheque for the purposes of s.23(2) of the Bills of Exchange Act 1882 (c.61); sufficient to make the other partner liable to the payee for the amount of the cheque (*Ringham v Hackett* (1980) 124 S.J. 201).

(e) Solicitor's bills, etc. (i) By Solicitors Act 1843 (c.73) s.37 (see Solicitors Act 1932 (c.37) s.65), no action could be brought on a Solicitor's Bill until one month after its delivery, "and which bill shall either be subscribed with the proper hand of such solicitor (or in the case of a partnership, by any of the partners, either with his own name or with the name or style of such partnership), or of the executor, administrator, or assignee, of such solicitor, or be enclosed in or accompanied by a letter, subscribed in like manner, referring to such bill"; see thereon *Re Bush*, 14 L.J. Ch. 6; *Pilgrim v Hirschfeld*, 12 W.R. 51; *Penley v Anstruther*, 52 L.J. Ch. 367; *Ingle v M'Cutchan*, 12 Q.B.D. 518.

(ii) The doctrine of *Durrell v Evans*, above, as expressed in *Evans v Hoare*, above, is applicable to agreements in writing relating to a solicitor's costs (*Re Frape* [1893] 2 Ch. 284).

(iii) A bill of costs accompanied by a letter bearing a rubber stamp signature of the solicitor who had himself stamped the letter was duly "signed" (*Goodman v J. Eban* [1954] 1 Q.B. 550).

(f) Electioneering papers. (i) Signatures to electioneering papers have a few special requirements distinct from other classes of signatures. In the first place, an objector must sign the objection himself, and not by an agent (*Toms v Cuming*, 14 L.J.C.P. 67; *Lewis v Roberts*, 11 C.B.N.S. 23); but a claim to vote need not be personally signed by the claimant (*Davies v Hopkins*, 27 L.J.C.P. 6; *Brown v Tombs* [1891] 1 Q.B. 253). So, the signature to a voting paper, semble, need not be a personal act, for in *R. v Avery* (21 L.J.Q.B. 430), Campbell C.J. said, "the burgess is to sign, or to have another to write his name for him in the shape of a signature". This was, however, an obiter dictum; the point decided in that case being that where a party is required merely to sign his name to an electioneering paper, his usual mode of signature is sufficient. If, however, there were only an initial for the surname, this would seem not enough; for the object of this kind of signature is not merely to authenticate the document but also to give strangers notice who is the party by whom the signature is made. Accordingly, in the days of open voting, a voting paper had to be signed by the voter's correct name; with this exception, if the burgess roll mentioned him by a wrong name he might vote in the name by which he was therein mentioned (*R. v Thwaites*, 22 L.J.Q.B. 238). And so, if a mark be used to sign an electioneering paper, it would seem that there must be the correct name of the person written against the mark; for a mere mark would not, semble, complete such a signature, as it would if the document were a will or contract. For the same reason the legibility of the signature, though wholly immaterial in a will or contract if it can be in any manner identified, may become an objection to a signature to an electioneering paper; but if such a signature is illegible by itself, but can be made out by reference to the register of voters or other extraneous public document, it will be sufficient (*Trotter v Walker*, 32 L.J.C.P. 60). It appears, however, from that case that if the illegibility were purposely in order to deceive, or if it were an utter illegibility, the signature to an electioneering paper would not be sufficient. The rule laid down in *Jenkyns v Gaisford*, above, (i.e. that a stamped impression of a signature to a will is sufficient) has been extended to signatures of electioneering

papers (*Bennett v Brumfitt*, 37 L.J.C.P. 25, applied in *Whyte v Watt*, 31 Sc. L.R. 127, cited SUBSCRIBE); but, semble, an objector must himself, with his own hand, impress his signature (*Toms v Cuming*, above). Where the christian name is required to be given, it is not necessary that it should be written at full length; a well-known contraction will be sufficient (*R. v Bradley*, 30 L.J.Q.B. 180). In that case Wightman and Hill JJ., said (obiter) that a mere initial for the christian name would not be sufficient; but the contrary was held in *Bowden v Besley*, 21 Q.B.D. 309, if, as in that case, the person signing is sufficiently identified thereby; see also NAME. Where an objector delivers to overseers a list of the persons he objects to (instead of giving a separate notice in respect of each person), the list is well signed though the signature of the objector thereon precedes, instead of following, the list of names (*Sutton v Wade* [1891] 1 Q.B. 269). See also *Taplin v Hegney*, 50 W.A.L.R. 4.

(ii) A revised list of voters is “signed” by the revising barrister, the clerk of the peace, or town clerk (Parliamentary Voters Registration Act 1843 (c.18) ss.41, 47, 48), by the official manually writing his own name (per Byles J., *Brumfitt v Bremner*, 9 C.B.N.S. 1).

(g) Judge’s orders and legal proceedings. (i) A judge’s order is well signed by a stamped similitude of the judge’s signature being impressed thereon by his clerk at chambers (*Blades v Lawrence*, L.R. 9 Q.B. 374).

(ii) But particulars in a county court action are not “signed” by the plaintiff’s solicitor, so as to entitle him to the costs thereof, if his name is only lithographed thereon (*R. v Fitzroy-Cowper*, 24 Q.B.D. 60; in the Appeal Court, Esher M.R. was for reversing this decision, but Fry L.J. agreed with it, and so the appeal fell through; 24 Q.B.D. 533); but his name written by his authorised clerk suffices (*France v Dutton* [1891] 2 Q.B. 208; see also County Court Rules, 1936 Ord.7 r.10).

(iii) Notice of a poor rate appeal was to be signed by the appellant or his “attorney on his behalf” (Poor Rate Act 1801 (c.23) s.4); that was complied with if the notice was signed, in the appellant’s name and with his authority, by his solicitor’s clerk (*R. v Kent Justices*, L.R. 8 Q.B. 305). Semble, that a notice was not a condition precedent to quarter sessions’ entering and respiting the appeal (*R. v De Grey* [1900] 1 Q.B. 521).

(iv) The signature of a town clerk to a notice under Public Health Act 1875 (c.55) s.206 was well made by its being printed thereon (*Brydges v Dix*, 7 T.L.R. 215; where *R. v Fitzroy-Cowper*, above, was commented on as being only of special application).

(v) The signature of a bishop, in Ecclesiastical Dilapidations Act 1871 (c.43) ss.35, 69, might be made by a similitude of his signature impressed by a stamp (*De Beauvais v Green*, 22 T.L.R. 816, reversed on another point, 24 T.L.R. 43).

(h) Office copies. By Insolvent Debtors Act 1820 (c.119) s.45, it was provided that proceedings thereunder should be proved by “a true copy, signed by the officer certifying the same to be a true copy”; and it was held, upon a liberal construction, that such a requirement would be satisfied by the office copy being vouched by the seal of the court (per Bayley B., *Doe d. Phillips v Evans*, 2 L.J. Ex. 181, 183).

Notices to quit were “signed by the valuer to the council” if he authorised an assistant who signed the valuer’s name (*LCC v Agricultural Food Products* [1955] 2 Q.B. 218).

“Sign the bill” (Administration of Justice (Miscellaneous Provisions) Act 1933 (c.36) s.2(1)). Merely to initial a bill of indictment is not to “sign” it within the meaning of this section (*R. v Morais* [1988] 3 All E.R. 161).

SIGNED

(Statute of Frauds 1677; Law of Property Act 1925 (c.20) s.40; Law of Property (Miscellaneous Provisions) Act 1989 (c.34) s.2.) The provisions of the Statute of Frauds 1677 and the Law of Property Act 1925 (c.20) s.40 should no longer govern the meaning of the word “signed” in the 1989 Act as they did not interpret “signed” in the way understood today. Where a document was required to be signed, the signatory had to write his own name in his own hand (*Firstpost Homes v Johnson* [1995] 1 W.L.R. 1567).

(Insolvency Rules 1986 (SI 1986/1925) r.8.2(3).) A proxy form was signed for the purposes of r.8(2)(3) if it bore upon it some distinctive or personal marking which had been placed there by or with authority of, the creditor so that a faxed form which had been signed by the transmitting creditor satisfied the provisions of the rules (*Re a Debtor* (No.2021 of 1995), *Ex p. Inland Revenue Commissioners v The Debtor* [1996] 2 All E.R. 345).

For considerations as to the satisfaction of a requirement for a signature by electronic means see New Law Journal, March 8, 2002, pp.348–51.

The general position is that at common law a document can be described as having been signed by a person if it is signed in his name and with his authority, but by somebody else. In *Re Home* [2000] 4 All E.R. 550, CA the court held that there was no necessarily implied displacement of this rule in the use of “sign” in r.6.1 of the Insolvency Rules 1986 (SI 1986/1925).

“Last annual balance sheet, signed”: see LAST.

Stat. Def., Water Act 1945 (8 & 9 Geo. 6, c.42) s.55(2); River Boards Act 1948 (11 & 12 Geo. 6, c.32) s.19(2); Highways Act 1959 (c.25) s.281(2); Local Government Act 1972 (c.70) s.234(2); Consumer Credit Act 1974 (c.39) s.189; Friendly Societies Act 1974 (c.46) s.111; Highways Act 1980 (c.66) s.321(2).

“I have no doubt that if a party creates and sends an electronically created document then he will be treated as having signed it to the same extent that he would in law be treated as having signed a hard copy of the same document. The fact that the document is created electronically as opposed to as a hard copy can make no difference. However, that is not the issue in this case. Here the issue is whether the automatic insertion of a person’s e-mail address after the document has been transmitted by either the sending and/or receiving ISP constitutes a signature for the purposes of s 4 [of the Statute of Frauds (1677)]. In my judgment the inclusion of an e-mail address in such circumstances is a clear example of the inclusion of a name which is incidental in the sense identified by Lord Westbury in the absence of evidence of a contrary intention. Its appearance divorced from the main body of the text of the message emphasises this to be so. Absent evidence to the contrary, in my view it is not possible to hold that the automatic insertion of an e-mail address is, to use Cave J’s language, ‘intended for a signature’.” (*J Pereira Fernandes v Mehta* [2006] EWHC 813 (Ch) per Judge Pelling QC at [29].)

See ELECTRONIC SIGNATURE; FALSE SIGNATURE; PARTY.

SIGNED, SEALED, AND DELIVERED. A will signed and sealed by the testator, duly attested, and declared by the testator to be his will, is a good execution of a power requiring him to execute it by an instrument in writing, “signed, sealed, and delivered” by him (*Smith v Adkins*, L.R. 14 Eq. 402). See DELIVERY.

A policy “signed, sealed, and delivered”, is complete and binding as against the party executing it, though in fact it remains in his possession, unless there is some particular act required to be done by the other party to declare his adoption of it; and it

is not necessary that the assured should formally accept or take away the policy in order to make the delivery complete (*Xenos v Wickham*, L.R. 2 H.L. 296). See also *Standing v Bowring*, 31 Ch. D. 282; *Babington v O'Connor*, 20 L.R. Ir. 254.

SIGNIFICANT. “Business which consists to a significant degree of selling . . . sex articles” (Local Government (Miscellaneous Provisions) Act 1982 (c.30) Sch.3 para.4). In considering what degree of business is “significant” within the meaning of this paragraph the relevant factor is the proportion of sales of sex articles relative to the total turnover of the shop. To be “significant” this proportion should be more than what would just be needed to prevent it from being brushed aside as *de minimis*, and annual turnover of sex articles representing 1 to 1.5 per cent of total sales was held not to be significant (*Lambeth LBC v Grewal* (1985) 82 Cr.App.R. 301).

(Children Act 1989 (c.41) s.31.) An abandoned baby was suffering “significant harm” immediately before it was rescued so as to justify an application for, and the granting of a care order (*Re M (Care Order: Parental Responsibility)* [1996] 2 F.L.R. 84).

(Limitation Act 1980 (c.58) s.14(1).) For the purposes of s.14(1) “significant” was defined as an injury sufficiently serious to cause severe pain and sufficiently disabling to go to an Accident and Emergency Department for investigation (*Shah v Dexion Group Ltd* [1998] 1 C.L. 53).

In the context of s.14(2) of the Limitation Act 1980 (c.58)—which operates by reference to the date when the claimant first knew that injuries were significant—“significant” has a partly subjective meaning requiring the court to consider what would reasonably occur to the claimant’s mind in all the circumstances (*K.P. v Bryn Alyn Community (Holdings) Ltd (in liquidation)* [2003] 3 W.L.R. 107, CA).

The term “significant” bears its ordinary meaning in the context of whether a person should have been aware of a significant risk of serious physical harm, and can safely be left to the jury without definition (*R. v Mujuru*, T.L.R., June 20, 2007, CA).

For a case in which “significant” (in the context of the VAT effect on potential distortions of competition) was held to include anything that was not negligible for all practical purposes, see *HMRC v Isle of Wight Council* (Case C-288/07) [2009] 1 C.M.L.R. 4 ECJ.

For the meaning of “significant effects on the environment” in art.2(1) of the Council Directive of June 27, 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC), see *Loader v Secretary of State for Communities and Local Government* [2011] EWHC 2010 (Admin).

“25. The first matter is the meaning of the word ‘significant’. In this regard Parliament chose to help the court to a limited extent by providing in s.31(10) [of the Children Act 1989] as follows: ‘Where the question of whether harm suffered by a child is significant turns on the child’s health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.’ When we read this subsection together with the definition of ‘harm’ in the preceding subsection, we conclude that, whereas the concept of ‘ill-treatment’ is absolute, the concept of ‘impairment of health or development’ is relative to the health or development which could reasonably be expected of a similar child. This is helpful but little more than common sense.

26. In my view this court should avoid attempting to explain the word ‘significant’. It would be a gloss; attention might then turn to the meaning of the gloss and, albeit with the best of intentions, the courts might find in due course that they had travelled

far from the word itself. Nevertheless it might be worthwhile to note that in the White Paper which preceded the 1989 Act, namely The Law on Child Care and Family Services, Cm 62, January 1987, the government stated, at para 60: 'It is intended that "likely harm" should cover all cases of unacceptable risk in which it may be necessary to balance the chance of the harm occurring against the magnitude of that harm if it does occur.' It follows that when, in *Re C and B (Care Order: Future Harm)* [2001] 1 FLR 611, Hale LJ (as my Lady then was) said, at para 28, that 'a comparatively small risk of really serious harm can justify action, while even the virtual certainty of slight harm might not', she was faithfully expressing the intention behind the subsection. But the other interesting feature of the sentence in the White Paper is the word 'unacceptable'. I suggest that it was later realised that whether the risk was 'unacceptable' was a judgement which fell to be made at the welfare stage of the inquiry; and so a different adjective was chosen." (*B (a Child)*, *Re* [2013] UKSC 33.)

SIGNIFICANT INJURY. In determining whether an injury is significant for the purposes of s.14 of the Limitation Act 1980, regard may be had only to the seriousness of the injury and not to the effect on the claimant's personal circumstances (*McCoubrey v Ministry of Defence* [2007] EWCA Civ 17; see also *Young v South Tyneside Metropolitan Borough Council* [2006] EWCA Civ 1534; *A. v Hoare* [2008] UKHL 6).

"The test for what constitutes a 'significant' injury is set out in s.14(2) of the 1980 Act. Lord Hoffmann explained the operation of that test in *A v Hoare* [2008] UKHL 6, [2008] 1 AC 844 at [34] as follows: 'I respectfully think that the notion of the test being partly objective and partly subjective is somewhat confusing. Section 14(2) is a test for what counts as a significant injury. The material to which that test applies is generally "subjective" in the sense that it is applied to what the claimant knows of his injury rather than the injury as it actually was. Even then, his knowledge may have to be supplemented with imputed "objective" knowledge under s.14(3). But the test itself is an entirely impersonal standard: not whether the claimant himself would have considered the injury sufficiently serious to justify proceedings but whether he would "reasonably" have done so. You ask what the claimant knew about the injury he had suffered, you add any knowledge about the injury which may be imputed to him under s.14(3) and you then ask whether a reasonable person with that knowledge would have considered the injury sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.' That exposition is helpful. I shall proceed on the basis of the plain words of s.14(2), as elucidated by Lord Hoffmann in that passage, without a lengthy recitation of the other judicial glosses on the section." (*Sir Robert Lloyd & Co Ltd v Hoey* [2011] EWCA Civ 1060.)

SIGNIFICANT PART. See *Sullivan v Warwick DC*, T.L.R., June 12, 2003, Q.B.D.

SIGNIFICANT RISK. The concept of significant risk in s.225(1) of the Criminal Justice Act 2003 has significant flexibility (*R. v Pedley* [2009] EWCA Crim 840).

"'Significant risk' is more than the mere possibility of occurrence and means 'noteworthy, of considerable amount or importance'—see *R v Lang* [2005] 1 Cr App R(S) 34. (*Nouri, R. v* [2012] EWCA Crim 1379.)

SILENCE. Mere silence, in the negotiation of a contract, is not the same as to suppress when there is a duty to disclose, which latter would avoid the contract (per Chitty J., *Turner v Green* [1895] 2 Ch. 205, citing per Campbell C., *Walters v Morgan*, 3 D.G.F. & J. 718). See also *M'Kenzie v British Linen Co*, 6 App. Cas. 82; per Joyce J.,

Seddon v North Eastern Salt Co [1905] 1 Ch. 335; *Carlish v Salt* [1906] 1 Ch. 335, cited PARTY WALL. Cp. constructive notice, under CONSTRUCTIVE; *Beyfus v Lodge* [1925] Ch. 350.

See MATERIAL EVIDENCE; STANDING BY.

SILICA ROCK. (Various Industries (Silicosis) Scheme 1931 (No.342) art.2.) Work on slate in a closed shed and not in a pit is not carrying out an operation on "silica rock" (*Roberts v Dorothea Slate Quarries Co (No.2)* 176 L.T. 543).

SILK. Silk watch-guards and silk dresses were included in the phrase "silks in a manufactured or unmanufactured state" as used in Carriers Act 1830 (c.68) s.1 (*Bernstein v Baxendale*, 6 C.B.N.S. 259, overruling *Davey v Mason*, C. & M. 50). So also was silk hose (per Willes J., citing *Hart v Baxendale*, in *Bernstein v Baxendale*, 28 L.J.C.P. 267). So also was elastic silk webbing, composed on one-third silk and two-third indiarubber and cotton, the silk being the most valuable of the materials and the webbing being called in the trade "silk web" as distinguished from cotton web (*Brunt v Midland Railway*, 33 L.J. Ex. 187). The statute spoke of silks "wrought up or not wrought up with other materials"; but that did not mean that any fabric that had silk in it was necessarily "silk" within the meaning of the Act. The court in *Brunt v Midland Railway* (above) refused to define how much admixture of silk would make a fabric "silk", and held that in cases of doubt it would be a question for the jury. Pollock C.B. said, "The line is shifted according to circumstances". But the summary of the facts in that case as given in the judgment of Martin B. seems to supply as good an indication as could probably be stated as to what the test was to be; he said, "We have here a fabric of which the most valuable portion is silk; the face of it is silk and the object of the manufacturer is to give it a face of silk; and an ignorant person would say it was silk".

In the Statutory Classification of Merchandise Class 5, the word silk was used in a very wide sense: see *Wilman & Sons v Great Northern Railway Co*, 16 Ry. & Can. Traff. Cas. 395.

"Soft or organzine silk": see *Elliott v Turner*, 2 C.B. 446.

Stat. Def., Finance Act 1926 (16 & 17 Geo. 5, c.22) s.5(2); Isle of Man (Customs) Act 1926 (16 & 17 Geo. 5, c.27) s.8.

See WASTE SILK.

SILVA CÆDUA. "'Sylva cædua', wood under 20 years growth; coppice-wood" (Cowel). See also SYLVA.

SILVER. "Silver" in Revenue Act 1867 (c.90) s.1 does not mean pure silver, but merely what in common parlance is called silver (*Young v Cook*, 3 Ex. D. 101). See hereon *Scott v Solomon* [1905] 1 K.B. 577, and *Goldsmith's Co v Wyatt* [1907] 1 K.B. 95, cited PLATE.

See TREASURE TROVE.

SIMEON'S ACTS. Administration of Estates Act 1798 (38 Geo. 3, c.87).

Transfer of Stock Act 1800 (39 & 40 Geo. 3, c.36).

SIMILAR. "Similar business": see *Drew v Guy* [1894] 3 Ch. 25; SAME.

"Similar character" (Indictments Act 1915 (c.90) Sch.I r.3). A charge of attempting to swindle underwriters by pretending that a mink coat was stolen was of a "similar character" to charges alleging attempts to swindle underwriters by setting fire to a yacht (*R. v Clayton-Wright* [1949] L.J.R. 380). For the purposes of joinder, the nexus showing offences to be of "a similar character" is not limited to cases in which the evidence of one is admissible on the trial of the other. For offences to be regarded as of

SIMILAR

a "similar character" there must be some connection, but all that is necessary to satisfy the rule is that the offences should exhibit such similar features as to establish a prima facie case that they could properly and conveniently be tried together (*R. v Kray* [1970] 1 Q.B. 125). Robbery with violence and attempted larceny are offences of a "similar character" within the meaning of this rule (*Ludlow v Metropolitan Police Commissioner* [1971] A.C. 29).

"Similar circumstances": see *Metropolitan Electric Supply Co v Ginder* [1901] 2 Ch. 799, cited *UNDUE PREFERENCE*. See also *Att-Gen v Hackney Corporation* [1918] 1 Ch. 373. Cp. *LIKE*.

"Similar facts", as to evidence admissible as to similar facts: see *Harris v DPP* [1952] A.C. 694.

"Similar licence" (Licensing (Consolidation) Act 1910 (c.24) s.16) meant a licence to sell the same kind of intoxicants as were being sold at premises which were already in possession of a licence: see *R. v Taylor* [1915] 2 K.B. 593.

"Similar licence" (Licensing Act 1964 (c.26) s.3(3)) held to mean the nearest type of licence to the existing one as was at the time permitted (*R. v Leicester Licensing Justices, Ex p. Bisson* [1968] 1 W.L.R. 729).

"Similar material" (Construction (General Provisions) Regulations 1961 (SI 1961/1580) reg.52). A household brick is not a "similar material" to stone, concrete or slag and does not therefore fall within the ambit of reg.52 (*Hobbs v Robertson (C.G.)* [1970] 1 W.L.R. 980).

Dock charges for articles of a "similar nature, package, value, and quality": see *Southampton Dock Co v Hill*, 16 C.B.N.S. 567.

"Welding or cutting . . . by means of an electrical, oxyacetylene or similar process" (Factories Act 1937 (c.67) s.49) was held to refer to cutting by means of a heat process and not by means of shears which were electrically operated (*Rees v Bernard Hastie & Co* [1953] 1 Q.B. 328).

"Similar statute" (Law of Property Act 1925 (c.20) s.7(1)) includes the Local Government Act 1929 (c.17) (*Tithe Redemption Commission v Runcorn Urban DC* [1954] Ch. 383).

"Similar services": see *SAME*.

"Similar structure": see *PIER*.

"Same or similar character": see *SAME*.

"Series of similar actions": see *SERIES*.

See *LIKE*; *SUCH*; *BROADLY SIMILAR*.

SIMILAR TO INHERITANCE. In the context of milk quotas and the transfer of holdings by inheritance "or any similar transaction", "similar transaction" meant that the intention was that the holding should continue to be exploited by the beneficiary and not that the producer should realise the marketable value of the holding (*Bredemeier v Landwirtschaftskammer Hannover* [2002] 2 C.M.L.R. 1053, ECJ.)

SIMONY. "Simony is the corrupt presentation of any one to an ecclesiastical benefice, for money, gift, or reward" (2 Bl. Com. 278; 4 Bl. Com. 62). See hereon *Wright v Davies*, 1 C.P.D. 638; *Lee v Flack* [1896] P. 145; Phil. Ecc. Law, 854-878; Jacob.

See *CORRUPT*; *IMMORAL*.

SIMPLE. See *Re Ethell and Mitchell & Butler* [1901] 1 Ch. 945, cited *FEE SIMPLE*.

SIMPLE CONTRACT. "Debts by simple contract are such where the contract upon which the obligation arises is neither ascertained by matter of record, nor yet by

DEED or special instrument, but mere oral evidence, the most simple of any; or by notes unsealed, which are capable of more easy proof, and (therefore only) better, than a verbal promise" (2 Bl. Com. 465, 466).

Provision is sometimes found in statute that a sum may be recovered as a simple contract debt. This used to be standard and is still found, but it is no longer of much or any significance. Originally it was important where it was desired to give the county courts jurisdiction in the matter: but they now have statutory jurisdiction to deal with recovery of sums due under statute (see County Courts Act 1984). At another stage in the history of this phrase it had significance in respect of limitation periods: but now the limitation periods for contract and statutory debts are the same. The phrase recently acquired renewed—and probably transient—significance, as a result of the decision of the Court of Appeal in *Agodzo v Bristol City Council* [1999] 1 W.L.R. 1971, CA. There the court construed the provision for a sum to be recovered as a "simple contract debt" as enabling the debtor to seek a declaration from a county court that the sum was unreasonable despite the fact that there were no proceedings for recovery, since the recovering public authority had been satisfied by the mortgagee who repossessed the property in respect of which the sum was owing. Cp. SPECIALTY.

SIMPLE FEE. See FEE SIMPLE.

SIMPLE LARCENY. "Simple larceny is 'the felonious taking, and carrying away, of the personal goods of another'" (4 Bl. Com. 229), i.e. THEFT.

SIMPLE TRUST. "The simple trust is where property is vested in one person upon trust for another, and the nature of the trust, not being prescribed by the settlor, is left to the construction of law. In this case the *cestui que trust* has *jus habendi*, or the right to be put into actual possession of the property, and *jus disponendi*, or the right to call upon the trustee to execute conveyances of the legal estate as the *cestui que trust* directs.

"The special trust is where the machinery of a trustee is introduced for the execution of some purpose particularly pointed out, and the trustee is not, as before, a mere passive depositary of the estate, but is called upon to exert himself actively in the execution of the settlor's intention; as where a conveyance is to trustees upon trust to sell for payment of debts" (Lewin (15th edn), 14).

Cp. CONSTRUCTIVE; RESULTING TRUST.

SIMULTANEOUSLY. (Copyright Act 1842 (c.45) s.3—see Copyright Act 1911 (c.46) s.35.) When it is said that the first publication of a book may take place "simultaneously" in the United Kingdom and elsewhere, that means on the same day (*Cocks v Purday*, 17 L.J.C.P. 273; *Boosey v Purday*, 4 Ex. 145).

SINCE. As regards an increase of rent "since March 25, 1920": see *Brakspeare & Sons Ltd v Barton* [1924] 2 K.B. 88.

SINE DIE. See WITHOUT DAY.

SINE QUA NON. See CAUSA CAUSANS.

SINECURE. When a clerk in Holy Orders has a living without cure of souls, he has a sinecure, e.g. if a clerk presented is distinct from the vicar (1 Bl. Com. 386). See also CANON.

SINGLE ARBITRATOR. See *Re Eyre and Leicester* [1892] 1 Q.B. 136, cited ARBITRATION, para.(11).

SINGLE GRAIN SCOTCH WHISKY. Stat. Def., Scotch Whisky Regulations 2009 (SI 2009/2890) reg.3.

SINGLE HOUSEHOLD. “Single household” (Housing Act 1969 (c.33) s.58(1)). A house maintained as a place of temporary refuge for ill-treated women, and which had a fluctuating population, was not a “single household” (*Simmons v Pizzey* [1977] 3 W.L.R. 1; *Silbers v Southwark LBC* (1978) 76 L.G.R. 421).

SINGLE INVESTEE COMPANY. “The board’s submission was simple. The phrase ‘single investee company’ should be given its primary meaning in ordinary speech. It meant a distinct corporate entity in which an investment was made. SEI’s case involved treating the aggregate of the companies in the MR group as a ‘single investee company’. That case is irrelevant. Mr McGregor referred me to well-known cases which vouch that the separate personality of a company is a real thing (*Salomon v Salomon & Co Ltd* [1897] AC 22, *Woolfsen v Strathclyde Regional Council* 1978 SC (HL) 90, *Adams v Cape Industries plc* [1990] 1 Ch 433 and *Watt’s Trustee v SPS (Holdings) Ltd* 2000 SC 371). . . . [17] I do not think that the word ‘company’ in the phrase ‘single investee company’ should be given an extended meaning. I have reached this view for the following four reasons. First, the deed of trust and the constitution were drafted by skilled solicitors who had extensive commercial experience. They must be taken to have been very familiar with the principle of separate corporate personality. There is no ambiguity in the phrase ‘single investee company’. If they had wished to express a limit on the power of the board to invest in companies within a group of companies, they could have chosen words which clearly achieved that result. Secondly, the document is a formal constitution which delimits the powers and duties of the board and the trustees. It is important that there is clarity in such a document. Mr Simpson sought to persuade me that the limit was on investing in a single undertaking or business. But the concept of a business or an undertaking in which a group of companies is involved is much less clear than that of a single company. There would be difficult questions as to the degree of financial inter-dependence required for a group of companies to be a ‘single investee company’ for the purposes of the constitution. It would be necessary to decide whether there had to be cross-guarantees or a particular degree of integration of the businesses carried on by separate companies within a group. [18] Thirdly, consistency of construction of phrases used in the deed of trust and the constitution points towards the ordinary meaning of the phrase. The phrase ‘investee company’ is used in clause 1.1 of the deed of trust in the definitions of ‘loan’ and ‘security’ where the recipient of a loan or the granter of a security would have to be a single corporate entity. Fourthly, I consider that if I were to uphold Mr Simpson’s submission I would be doing violence to the language that the parties had used. This is not a case where the contract is unclear or where one can infer that the parties have made a mistake in the words they have chosen to express their agreement. In *Pink Floyd Music Ltd v EMI Records Ltd* [2010] EWCA Civ 1429, Lord Neuberger MR stated (at para.22) ‘. . . before the court can be satisfied that something has gone wrong, the court has to be satisfied both that there has been “a clear mistake” and that it is clear “what correction ought to be made” (per Lord Hoffmann in *Chartbrook* [2009] 1 AC 1101, paras 22–24, approving the analysis of Brightman LJ in *East v Pantiles (Plant Hire) Ltd* (1981) 263 EG 61, as refined by Carnwath LJ in *KPMG LLP v Network Rail Infrastructure Ltd* [2007] Bus L R 1336).’ I am not confident that there was a mistake or that the parties would have agreed a restriction which referred to a single investee business or a single investee undertaking because of the uncertainty inherent in such phrases. It is not open to the court in these

circumstances to substitute for the parties' contract an arrangement which it considers to be more sensible." (*Symphony Equity Investments Ltd v Shakeshaft* [2013] ScotCS CSOH 102.)

SINGLE MALT SCOTCH WHISKY. Stat. Def., Scotch Whisky Regulations 2009 (SI 2009/2890) reg.3.

SINGLE PAYMENT. (Supplementary Benefits Act 1976 (c.71) s.3(1) as amended by Sch.2 to the Social Security Act 1980 (c.30).) These words are limited to exceptional expenditure on a single occasion or on several occasions over a limited period (*Vaughan v Social Security Adjudication Officer* [1987] 151 J.P.N. 15). See also EXCEPTIONAL.

SINGLE PERSON. "Single person" (Income Tax Act 1952 (c.10) s.256). A nominee and his principal were to be regarded as a "single person" for the purposes of this section (*Morrison Holdings v IRC* [1966] 1 W.L.R. 553).

"Two or more . . . bodies corporate . . . shall be treated as a single person" (Restrictive Trade Practices Act 1956 (c.68) s.8(9)). This does not mean that the bodies to which the section relates are to be treated as one and the same person. They remain separate suppliers for the purposes of s.7(2) (*Registrar of Restrictive Trading Agreements v Schweppes (No.2)* [1971] 1 W.L.R. 1148).

SINGLE PRIVATE DRAIN. See DRAIN; SEWER.

(Public Health Acts Amendment Act 1890 (c.59) s.19.) See *Hill v Aldershot Corporation* [1933] 1 K.B. 259.

SINGLE SITTING. See SITTING.

SINGLE SPECIMEN. "Single specimen" (Road Traffic Act 1962 (c.59) s.2(4)). The words "a single specimen" denote any given quantity of blood taken in one syringe. Provided that two equal parts are taken from this syringe and one part given to the accused it matters not that any blood remaining in the syringe is retained by the police or thrown away (*Kidd v Kidd; Ley v Donegani* [1969] 1 Q.B. 320).

SINGLE TERM. (Criminal Justice Act 1991 (c.53) s.51(2).) Where a prisoner commits a new offence during his release on licence with the result that the original offence is activated but a new sentence of imprisonment imposed, the order for return to prison whether served before or concurrently with the new term amounts to a "single term" within the meaning of s.51 (*R. v Secretary of State for the Home Department, Ex p. Probyn* [1998] 1 All E.R. 357).

SINGLE USE CARRIER BAG. Stat. Def., Climate Change Act 2008 Sch.6 para.5.

SINGLE WOMAN. "Single woman" (Application Proceedings Act 1957 (c.55) s.1). The cases on the earlier Act were followed in *Giltrow v Day* [1965] 1 W.L.R. 317 where it was held that as she and her husband were not living in wholly separate households the wife was not a "single woman" for the purposes of this Act. But in *Whitton v Garner* [1965] 1 W.L.R. 313 it was held that a complainant could be a "single woman" within the meaning of this section despite the fact that she was married and living in the same house as her husband, and even though her evidence as to non-access by her husband was uncorroborated. The applicant must be a "single woman" at the date of her complaint to the court; it is immaterial that she was not so at the date of the child's birth (*Gaines v W. (An Infant)* [1968] 1 Q.B. 782).

Stat. Def., Family Income Supplements Act 1970 (c.55) s.17.

See FEME; SPINSTER; UNMARRIED.

SINK. "Warranted free from particular average unless the ship is stranded, sunk, or burnt"; a ship is not "sunk" within this phrase if she springs a leak and thereby takes in a great deal of water which presses her down very low and much wets the cargo, but notwithstanding which she gets into port (*Bryant & May v London Assurance*, 2 T.L.R. 591). See STRANDING; BURN.

"'Sink into the residue' points to a charge which had been previously provided out of the fund in which it was to sink; otherwise the expression 'sink into the residue' would hardly be appropriate" (per Cranworth C., *Johnson v Webster*, 24 L.J. Ch. 302). See FALL.

See EASEMENT; SEARCH.

SINKING FUND. "Sinking fund" for the redemption of debentures does not, necessarily, connote accumulation at compound interest, or any like mode of application (*Re Chicago & NW Granaries Co* [1898] 1 Ch. 263).

SIR. See DEAR SIR.

SISTER. "Sister-in-law": see *Re Richards*, 162 L.T. 47, cited BROTHER-IN-LAW.

"Younger sister": Stat. Def., Unemployment Insurance Act 1935 (c.8) s.37(4)(c).

Stat. Def., Marriage Act 1949 (c.76) s.78(1); Superannuation Act 1965 (c.74) s.99.

See BROTHER.

SISTERS. See *Re Embury* [1914] W.N. 220.

SITE. "The term 'site', in relation to a house, building, or other erection, shall mean the whole space to be occupied by such house, building, or other erection, between the level of the bottom of the foundations and the level of the base of the walls" (Metropolis Management Act 1878 (c.32) s.14). That definition, provided for Pt II of the Metropolis Management Act 1878 (above), was applied to a bye-law made by the Metropolitan Board of Works (*Blashill v Chambers*, 14 Q.B.D. 479).

For the meaning of the words "as a site", in a will, see *Re Whiteley* [1910] 1 Ch. 600.

"Site" (Caravan Sites and Control of Development Act 1960 (c.62) ss.1(4), 13(a)). "That word seems to me to connote a place habitually devoted to some purpose" (per Harman L.J. *Biss v Smallburgh RDC* [1965] Ch. 335).

The "site" of a canal within the meaning of s.15(3)(a) of the Rochdale Canal Act 1965 (c. xxxvii) extends to all the airspace above and the earth beneath (*Manchester Corp v Rochdale Canal Co* (1970) 69 L.G.R. 517).

"The site... to which the balloon is attached" (Town and Country Planning (Control of Advertisements) Regulations 1984 (SI 1984/421) reg.2(4)). For the purposes of these regulations the "site" can be any object on the premises heavy enough to prevent the balloon blowing away, such as, in this case, a motor vehicle (*Wadham Stringer (Fareham) v Fareham BC* (1987) 53 P. & C.R. 336).

(Town and Country Planning (Control of Advertisements) Regulations 1989 (SI 1989/670) reg.8 Sch.3.) "Site" in the 1989 Regulations referred to the whole premises on which the advertisements were displayed rather than just the specific area of the premises covered by the advertisement (*Barking & Dagenham LBC v Mills and Allen Ltd Co* [1997] 1 C.L. 535).

"Site value": Stat. Def., Housing Act 1969 (c.33) Sch.5 para.5(2).

Stat. Def., Town and Country Planning Act 1932 (c.48) s.53; Coal Industry Nationalisation Act 1946 (c.59) Schs 1, 25.

“... a site is not coterminous with an installation. There can be more than one installation on a site.” (*R. (Anti-Waste Ltd) v Environment Agency* [2007] EWHC 717 (Admin).)

“Second, one possible reading of the definition of site employee would mean that someone who carried on paragraph 1(a)(ii) work in planning and design, in an office block remote from any place where physical engineering construction work was actually carried on, was an on site employee; but the Training Board before the Tribunal accepted that the use of the word ‘site’ and the definition of site employee was not intended to cover those who carried out the activity in paragraph 1(a)(ii) of planning and design on a site where none of the activities in paragraph 1(a)(i), (iii) and (iv) were carried on. The Training Board’s approach to the statutory interpretation of site employee was accepted by the Employment Tribunal as one which favoured the levy payer. This distinction was enacted in the 2009 Order where, in the definition of site employee, the reference to paragraph 1(a) of schedule 1 to the 1991 Order is now qualified by the addition of ‘(i), (iii) and (iv)’, obviously omitting what might otherwise have been the crucial reference to (ii). . . . I would be very reluctant to accept as correct in law the adopting of any hard and fast rules for setting out how the application of the word ‘site’ to a set of facts should be approached. I point out, however, that the higher levy indicates a greater need for benefit from the safety and skills training provided by the Training Board. Office workers carrying out 1(a)(ii) work in a leviabale establishment, as at the appellant’s own base, are levied at the lower rate, as would be agency staff carrying out work in offices remote from the site where paragraph 1(a)(i), (iii) and (iv) engineering construction activities were carried on. That accepted legislative structure and its consequences suggests—I put it no higher—that a purposive approach to the definition of site and off site employee, and hence site within the definition of site employee for whom the higher rate applies, is better met by considering the physical separation or intermingling of the office, where no engineering construction activities within 1(a)(i), (iii) and (iv) are carried on, from an area where those activities themselves are actually carried on and where the greater danger lies and where the need for greater training lies, rather than by treating what may obviously be one industrial complex or development as the engineering construction activity site when deciding whether the higher levy is payable. However, in any given case it may be appropriate to describe the whole area of industrial activity, including offices in its midst, as the site, or to do so even where the offices are separated by road or fences from that larger area.” (*R. (on the application of On Line Design and Engineering Ltd) v Engineering Construction Industry Training Board* [2010] EWHC 2776 (Admin).)

“48. I accept Mr Martin’s submission that in the context of this dispute the word ‘site’ must be construed in a manner that accords with how it would be understood in the industry.

49. I can find no error of law in the conclusion set out at para.18 of the ET’s judgment (set out in para.44 above). I do not consider that the ET was adopting a strict ‘perimeter fence’ approach, although it may well have taken that as its starting point. I agree with Ouseley J. that there is no ‘bright line’ solution to the question of where a particular site begins or ends: it is really a matter of impression. The authorities show that an impressionistic approach to problems of this sort is entirely appropriate. That was the approach adopted by the ET on a site by site basis.

SITTING

50. I can discern no ambiguity in the meaning of 'site' as construed by the ET. It may be that there will be borderline cases when the answer to the question of whether a person is or is not a site employee, but that does not mean that there is an ambiguity." (*On Line Design & Engineering Ltd v Engineering Construction Industry Training Board* [2013] EWHC 287 (Admin).)

SITTING. "To lose £10 at one 'time' is to lose it by a single stake or bet; to lose at one 'sitting' is to lose it in a course of play where the company never parts, though the person may not be actually gaming the whole time" (per Blackstone J., *Bones v Booth*, 2 Bl. W. 1226). Cp. ONE TIME.

See SESSIONS.

SITUATE. See IN; *Crompton v Jarratt*, 30 Ch. D. 298; *Hibon v Hibon*, 32 L.J. Ch. 374, cited MESSAGE.

"Wheresoever situate" is a context which may make effects comprise realty (*Hall v Hall* [1892] 1 Ch. 361).

Dominion Government bonds, being specialties, are "situate" where they in fact are at the death of the deceased (*Royal Trust Co v Att-Gen for Alberta* [1930] A.C. 144).

Shares in a company are situate at the office of the company where they can be effectually dealt with as between the shareholder and the company (*Erie Beach Co v Att-Gen for Ontario* [1930] A.C. 161; *R. v Williams* [1942] A.C. 541).

"Situate out of Great Britain" (Finance Act 1949 (c.47) s.28(2)). An ocean going yacht normally berthed in Southampton, but registered in Jersey, was not "situate out of Great Britain" (*Trustee Agency Co v IRC* [1973] 1 Ch. 254). For the purposes of estate duty, shares in foreign companies which nevertheless keep registers in Great Britain, and the certificates of which are deposited in British banks, are capable of being property "situate out of Great Britain" if the deceased owner could, or would in practice, have dealt with the shares only from outside Great Britain (*Standard Chartered Bank v IRC* [1978] 1 W.L.R. 1160).

See LOCALLY SITUATE.

SITUATION. That was a sufficient description "of the situation of the house or shop"—in a notice of application for a licence under Wine and Beerhouse Act 1869 (c.27) s.7—which gave a reasonable identification; such identification would vary according to the circumstances of the locality in which the house or shop was, e.g. if the locality was a little village it would be sufficient to state that it was situated in that village, or, if a small town, enough would generally be done if the street of that town was given (*R. v Penkridge Justices*, 61 L.J.M.C. 132, cited DESCRIPTION); but if the house or shop had a number such number should have been given.

"Situation of the property in respect of which he is enrolled" (Municipal Elections Act 1875 (c.40) Sch. Form 2); see *Soper v Basingstoke*, 2 C.P.D. 440.

"If in any situation fronting, adjoining or abutting on any street or public footpath", there was any excavation or bank dangerous to passengers, the same might be ordered to be made safe (Public Health Act Amendment Act 1907 (c.53) s.30), the excavation or bank did not need to be absolutely contiguous to the street or footpath if it was sufficiently near thereto to cause danger: see *Carshalton Urban Council v Burrage*, 80 L.J. Ch. 500.

"Situation or employment", in definition of OFFICE: see *R. v Armagh* [1901] 2 Ir. R. 31, 33.

See PUBLIC SITUATION.

SIX FOLLOWING YEARS OF ASSESSMENT. Finance Act 1926 (c.22) s.33(1): authorising a carry forward of trading losses, included the year of assessment following which the loss was incurred (*Harling v Celyn Collieries Workmen's Institute* [1940] 2 K.B. 465).

SIX MONTHS. "A six months" notice to quit means a notice served six months prior to the day the tenancy is to be determined, and is not necessarily equivalent to a "half-year's" notice, six lunar months may frequently suffice (*Walker v Constable*, 3 Wils. 25; *Flower v Darvy*, 1 T.R. 159; *Rogers v Hull Dock Co*, 34 L.J. Ch. 165; *Wilkinson v Calvert*, 3 C.P.D. 360; *Barlow v Teal*, 15 Q.B.D. 501; but see *R. v Chawton*, 1 Q.B. 247, cited MONTH; *Morgan v Davies*, 3 C.P.D. 260). Of course, if six "calendar" months are stipulated, the months must be reckoned by the calendar notwithstanding a local custom to the contrary (*Travers v Mason*, 45 W.R. 77).

In so far as s.2(1) of the Agricultural Holdings Act 1948 (c.63) is concerned, a letting of agricultural land for "six months periods" must be a letting for one year certain at least and therefore is not within the proviso of the said section (*Rutherford v Maurer* [1962] 1 Q.B. 16).

See BY LAW; CALENDAR MONTH; HALF A YEAR; MONTH.

SKILL. When a skilled person "is employed, there is on his part an implied warranty that he is of skill reasonably competent to the task he undertakes—*spondes peritiam artis*" (*Harmer v Cornelius*, 5 C.B.N.S. 246); i.e. not the very highest skill (*Rich v Pierpoint*, 3 F. & F. 35), but "that ordinary degree of skill and knowledge which would reasonably be expected from one acting in the particular employment and circumstances" (*Jenkins v Betham*, 15 C.B. 189).

Skill embraces care (*Lister v Romford Ice and Cold Storage Co* [1957] A.C. 555). For "of what advantage to the employer is his servant's undertaking that he possesses skill unless he undertakes also to use it" (per Viscount Simonds, *Lister*).

See hereon, as to the medical profession, *Lamphier v Phipos*, 8 C. & P. 479; *Rich v Pierpoint*, above:—a solicitor, *Godefroy v Dalton*, 6 Bing. 468; *Donaldson v Haldane*, 7 Cl & F. 762; *Purvess v Landell*, 12 *ibid.* 91; *Lewis v Collard*, 14 C.B. 208:—a parliamentary agent, *Bulmer v Gilman*, 4 M. & G. 108:—an architect, *Le Lievre v Gould* [1893] 1 Q.B. 491; *Rogers v James*, 2 Hudson 113:—a surveyor and valuer, *Jenkins v Betham*, above; *Turner v Goulden*, L.R. 9 C.P. 57:—a house agent, *Heys v Tindall*, 30 L.J.Q.B. 362:—a scene painter, *Harmer v Cornelius*, above:—a water-finder, *Pritty v Child*, 71 L.J.K.B. 512, cited RECKLESS. See also RELY.

A person who is sufficiently "skilled" to act as an expert witness is one who has, by dint of training and practice, acquired a good knowledge of the science or art concerning which his opinion is sought, and the way in which he acquired his skill is immaterial (*R. v Bummiss*, 44 C.R. 262). A bank manager was held to be "specially skilled" in foreign law as to the proof of what notes were legal tender (*Ajami v Controller of Customs* [1954] 1 W.L.R. 1405).

Is not synonymous with care (*McCrone v Riding* [1938] 1 All E.R. 157).

(Betting and Lotteries Act 1934 (c.58) s.26.) For cases in which the question whether success in competitions depends to a substantial degree upon the exercise of skill, see *Witty v World Service* [1936] Ch. 303; *Moore v Elphick* [1945] 2 All E.R. 155; *Boucher v Rowsell* [1947] 1 All E.R. 870. See GAMING; GAME OF CHANCE.

Cp. NEGLIGENCE; ORDINARY CARE.

SKIMMED MILK. "Skimmed milk" means milk from which the cream which naturally rises to the surface has been skimmed in the ordinary manner; therefore,

where the evidence only showed that the milk had been deprived of its butter fat, there was a "disclosure" of that alteration (Sale of Food and Drugs Act 1875 (c.63) s.9) if it was described as "skimmed milk" (*Jones v Davies*, 69 L.T. 497; *Platt v Tyler*, 58 J.P. 71); *secus*, if the evidence showed that the butter fat had been extracted to a greater extent than would result from mere skimming, e.g. by a separator (*Petchey v Taylor*, 78 L.T. 501). See ABSTRACTION.

SKIN. In the memorandum of a policy of marine insurance it has been held in the United States that "skins" includes deerskins (*Bakewell v United Insurance*, 2 Johns. C.A. 246), but that "skins and hides" does not include FURS (*Astor v Union Insurance*, 7 Cowen, 202).

SKY SIGN. Stat. Def., London Building Act 1894 (c. ccxiii) s.125; London Building Act 1930 (c. clviii) s.5; see hereon *London CC v Carwardine*, 62 L.J.M.C. 40; *R. v Vaughan*, 12 T.L.R. 193, on which see *London CC v Savoy Hotel Co*, 12 T.L.R. 468; *Tussaud v London CC*, 9 T.L.R. 64.

SLACK. See IRON.

SLACKEN. The obligation, where there is risk of collision, to "slacken speed, or stop and reverse if necessary" (Regulations for Preventing Collisions at Sea 1884 art.18—see now Regulations of 1910 (No.1113) art.23), does not connote an instantaneous compliance; "a short, but a very short, time must be allowed" (*The Ngapoota* [1897] A.C. 391, approving *The Emmy Haase*, 9 P.D. 81).

SLANDER. Slander of title is falsely and maliciously to write or speak defamatory words affecting the title of another to real or personal property. See hereon *Steward v Young*, L.R. 5 C.P. 122.

"Slander of title is a false malicious statement in writing, printing, or by word of mouth injurious to any person's title to property, and causing special damage to such person" (Fraser, Libel and Slander (7th edn), arts 7, 45). See hereon *British Railway Traffic & Electric Co v The CRC Co and the London CC* [1922] 2 K.B. 260, and cases therein cited.

"Slander of goods' is a form of slander of title, and the action is for making defamatory statements about a man's goods, which are actionable if they are untrue and cause him special damage and are made maliciously" (per Scrutton L.J., *Greers Ltd v Pearman & Corder Ltd*, 39 R.P.C. 406).

See now Defamation Act 1952 (c.66) s.3.

See WORDS; INNUENDO; PRIVILEGED COMMUNICATION. Cp. LIBEL, which see for reference to treatises on libel and slander.

SLAUGHTER. Horse or other cattle "brought, to, or delivered at" a slaughter-house "for the purpose of being slaughtered" (Cruelty to Animals Act 1849 (c.92) s.8): see *Edgar v Spain*, 84 L.T. 631.

SLAUGHTER-HOUSE. Stat. Def., Food Safety Act 1990 (c.16) s.53.

SLAVE-TRADING. "Each of the following acts, and every contract to do any one of them, is an act of slave-trading: (a) To deal or trade, in, purchase, sell, barter, or transfer slaves or persons intended to be dealt with as slaves; (b) to carry away or remove slaves or other persons as or in order to their being dealt with as slaves; (c) to import or bring into any place whatsoever slaves or other persons as or in order to their being dealt with as slaves; (d) to ship, tranship, embark, receive, detain, or confine on board any vessel slaves or other persons, for the purpose of their being carried away or removed as or in order to their being dealt with as slaves; or for the purpose of their being imported into any place whatever as or in order to their being dealt with as

slaves; (e) to fit, out, man, navigate, equip, despatch, use, employ, let, or take to freight, or on hire, any vessel, in order to do any act of slave-trading before mentioned; (f) to lend or advance, or become security for the loan or advance of money, goods, or effects, employed or to be employed in any act of slave-trading before mentioned; (g) to become guarantor or security for agents employed, or to be employed, in any act of slave-trading before mentioned; (h) to engage in any other manner in any act of slave-trading before mentioned, directly or indirectly, as a partner, agent, or otherwise; (i) to ship, tranship, lade, receive, or put on board of any vessel, money, goods, or effects, to be employed in any act of slave-trading before mentioned; (j) to take the charge or command, or to navigate, or enter and embark on board any vessel in any capacity, knowing that such vessel is employed in any act of slave-trading before mentioned, or is intended to be so employed upon the voyage or upon the occasion in which the embarkation takes place; (k) to insure slaves or property employed or intended to be employed in slave-trading” (Steph. Cr. (9th edn), 105, 106, epitomising Slave Trade Act 1824 (c.113) s.2). See, art.114 as to piratical slave trading.

In Slave Trade Act 1873 (c.88) s.2, “‘slave trade’, when used in relation to any particular treaty, does not include anything declared by such treaty not to be comprised in the term or in such treaty”.

See EXISTING.

SLAVERY. See per Hargrave arg., *Sommersett’s Case*, 20 State Trials 25, 26.

“In descending order of gravity, therefore, ‘slavery’ stands at the top of the hierarchy, ‘servitude’ in the middle, and ‘forced or compulsory labour’ at the bottom.” (*R. v S.K.* [2011] EWCA Crim 1691.)

Stat. Def., includes: (a) trafficking for sexual exploitation; (b) child trafficking; (c) trafficking for forced labour; and (d) domestic servitude (Anti-Slavery Day Act 2010 s.1).

Stat. Def. (by implication), Modern Slavery Act 2015 s.1.

SLEDGE. “A bicycle is clearly not a ‘sledge’, or a ‘drag’”, nor is it “a carriage of the same nature as a sledge or drag” (per Stirling L.J., *Smith v Kynnersley*, 72 L.J.K.B. 361; see also CARRIAGE).

SLEEP WITH. “The question is not whether the words ‘slept with’ are capable of more than one meaning. It is whether one of the meanings of which they are capable is that sexual intercourse took place. It is conceded by counsel for the appellant that ‘slept with’ is capable of that interpretation. That, in my opinion, establishes that even without the evidence of the police interview there was a formal sufficiency of evidence.” (*G.M. v HM Advocate* [2011] ScotHC HCJAC 112.)

SLEEPING. An unfurnished room did not comply with the description “accommodation for sleeping” within the meaning of para.22 of the Wages Regulation (Unlicensed Place of Refreshment) Order 1949 (No.433) (*Parkinson v Plumpton (H. & J.)* [1954] 1 W.L.R. 75).

SLIGHT. “Slight lameness”, in a representation on which an accident policy is effected: see *Cruikshank v Northern Accident Insurance*, 33 Sc. L.R. 134; in that case Macdonald L.J.C. said, “‘Slight’ is a word which may be used by different persons according to the variety of the views which they are in the habit of taking of things”; see PARALYSIS.

SLIP. “The ‘slip’ (in a marine policy) is in practice the complete and final contract between the parties, fixing the terms of the insurance and the premium; and neither party can, without the assent of the other, deviate from the terms thus agreed on

without a breach of faith, for which he would suffer severely in his credit and future business" (per Blackburn J., *Ionides v Pacific Insurance*, L.R. 6 Q.B. 684. See also *Cory v Patton*, L.R. 7 Q.B. 308; 9 Q.B. 577; *Morrison v Universal Marine Insurance*, L.R. 8 Ex. 199). It is, however, not a "policy of insurance" at all, and therefore not a "policy of sea insurance" within the Stamp Act 1891 (c.39), nor is it even a contract to issue a policy; "it is a contract of sea insurance not enforceable" (per Mathew J., *Home Marine Insurance v Smith* [1898] 1 Q.B. 829, affirmed [1898] 2 Q.B. 351).

As to its admissibility to explain what policies are referred to in a re-insurance, see *Lower Rhine Insurance v Sedgwick* [1898] 1 Q.B. 739, cited ORIGINAL POLICY. See also *Royal Exchange Assurance v Tod*, 8 T.L.R. 669.

As to effect of the "slip" as regards fire insurance, see *Thompson v Adams*, 23 Q.B.D. 361.

"Accidental slip or omission": see ACCIDENTAL; MISTAKE.

SLIP ORDER. R.S.C. Ord.28 r.11, now Ord.20 r.11, generally known as the slip order, is intended to be used where there has been an accidental slip or omission.

SLIT. Any division of the flesh or gristle of the nose, whether perpendicular or transverse, was a "slitting" within the Coventry Act (*R. v Carroll*, 1 East P.C. 395; see also *R. v Coke*, 1 East P.C. 396).

SLOPS. Slops to seamen are articles of clothing, tobacco, etc. supplied to seamen by the master of a ship during a voyage: see hereon *The Parkdale* [1897] P. 53.

SLOW. "I do not think that 'slow' [on a traffic sign] means any more than 'proceed with caution'—proceed at such a speed that you can stop if, when you get to the crossing, you find somebody, or something, in the process of crossing, or about to cross" (per Bucknill L.J., *Buffel v Cardox (Great Britain)* [1950] 2 All E.R. 878, fn.).

SLUSH FUND. "The natural meaning of 'slush fund' is that money is either being used for improper purposes or, at the very least, for purposes which the provider of the funds is not prepared publicly to acknowledge because he fears that legitimate criticism of use of such funds can be made. In the context of local authority expenditure, the ordinary reader would regard the use of the term 'slush fund' as an imputation that the provider of the funds is acting corruptly. The purpose of using the word 'slush' as part of the term 'slush fund' is to imply that the money is dirty money." (*Thompson v James* [2014] EWCA Civ 600.)

SMALL. A capital distribution representing 15.58 per cent of the value of shares in respect of which it was made was not "small, as compared with the value of the shares in respect of which it is distributed" within the meaning of s.72(2) of the Capital Gains Tax Act 1979 (c.14) (*O'Rourke v Binks* [1991] S.T.C. 455).

SMALL DONATION. Stat. Def., Small Charitable Donations Act 2012 s.3.

SMALL DWELLINGS. (Settled Land Act 1925 (c.18) Sch.3 Pt I para.(xxii)) include workmen's residential flats (*Re Paddington Estate* [1940] Ch. 43).

SMALL FIRM. Stat. Def., Inner Urban Areas Act 1978 (c.50) s.11(3).

SMITE. "A threatening posture, though an assault at common law even without a blow, is not a 'smiting'", within s.2 of the Act against quarrelling and fighting in churches and churchyards (5 & 6 Edw. 6, c.4) (*Jenkins v Barrett*, 1 Hagg. Ecc. 15). See hereon *Wilson v Greaves*, 1 Burr. 240.

See BRAWLING.

SMOKE. Stat. Def., "the carbonaceous materials in exhaust emissions which obscure the transmission of light" (Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008 (SI 2008/3133) art.3(1)).

SMOKING. Stat. Def., “(a) ‘smoking’ refers to smoking tobacco or anything which contains tobacco, or smoking any other substance, and (b) smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked” (Health Act 2006 s.1).

SMOOTH-BORE GUN. See FIREARM.

SMUGGLING. Stat. Def., Tobacco Products Duty Act 1979 s.7A(3) inserted by Finance Act 2006 s.2.

SNARE. “Snare . . . or other like instrument”: see *Jones v Davies* [1898] 1 Q.B. 405, cited OTHER. In that case Day J. said, “A snare is an instrument of destruction; it is not a net; neither is a net a snare”. Cp. ENGINE; see NET.

SNOWBALL SCHEME. A “snowball scheme” by which money paid by members was redistributed to scheme members with founder members receiving the most, amounted to a lottery for the purposes of the Lotteries and Amusements Act 1976 (c.32) but was not regarded as a “game” by any of the participants and so did not amount to “gaming” within the meaning of the Gaming Acts 1845 or 1968 (*One Life Ltd (in liquidation) v Roy*, *The Times*, July 12, 1996).

SNUFF. Stat. Def., Tobacco Act 1842 (c.93) s.14; Customs and Excise Act 1952 (c.44) s.191(3).

SO. “So”, when used in connection with something to be done—e.g. “so completed”, or “so altered”—imports the doing of the thing in the manner and so as to satisfy the requirements previously prescribed (see per Smith J., *Great Western Railway v Halesowen Railway*, 52 L.J.Q.B. 479; see also *Dyke v Gower* [1892] 1 Q.B. 220, cited MILK).

“So devised” means “hereinbefore devised” (*Giles v Melsom*, L.R. 6 H.L. 24).

SO AS. “So as not to violate”: see VIOLATE.

SO DOING “For so doing”: see *Paterson v Gas Light & Coke Co* [1896] 2 Ch. 476, cited NEW OCCUPIER.

SO FAR AS. A perfect direction or convention, wrong in itself, is not vitalised by a proviso that it is to be operative only “so far as”, “so long as”, or “as near as”, the rules of law will permit; nor will such phrases, by themselves, control the construction; but where there is a covenant to settle property, or it can be seen that a trust is executory, those and such like phrases may have application to prevent an infraction of the law, e.g. to avoid a construction of a bequest of chattels as heir-looms that would be obnoxious to the rule against perpetuities (*Potts v Potts*, 3 J. & La T. 353; 1 H.L. Ca. 671). See hereon *Tollemache v Coventry*, 2 Cl. & F. 611; *Scarsdale v Curzon*, 29 L.J. Ch. 249 (which contains an elaborate discussion of the cases by Wood V.C.); *Christie v Gosling*, 35 L.J. Ch. 667; *Churchill v Churchill*, L.R. 5 Eq. 49, 50; *Talbot v Jevers*, L.R. 20 Eq. 255; *Harrington v Harrington*, L.R. 5 H.L. 87; *Exmouth v Praed*, 23 Ch. D. 158; *Re Johnson*, *Cockerell v Essex*, 26 Ch. D. 538; *Re Hill* [1902] 1 Ch. 537. See also *Re Kensington* [1902] 1 Ch. 203; *Pugh v Drew*, 17 W.R. 988, cited EQUITABLE; *Portman v Portman* [1922] 2 A.C. 473, cited HEIRS. See HEIRLOOMS.

So a covenant in restraint of trade too wide in its terms and therefore inoperative, is not saved by being expressed to be “so far as the law allows”; the parties must themselves agree and properly state the limits of time and space within which the covenant is to operate (*Davies v Davies*, 36 Ch. D. 359).

Maritime lien for disbursements or liabilities, as well as wages, “so far as the case permits” (Merchant Shipping Act 1889 (c.46) s.1; see Merchant Shipping Act 1894 (c.60) s.167(2)); see *Morgan v Castlegate SS Co* [1893] A.C. 38, cited “maritime lien”, under LIEN.

“So far as circumstances admit”: see *Westacott v Stewart* [1898] 1 Q.B. 552.

“So far as they legally can” is the same as “so long as the law for the time being permits” (*Re Hooper* [1932] 1 Ch. 38).

“So far as may be necessary for the beneficial winding-up” (Bankruptcy Act 1914 (c.59) s.56(1)). See *Clark v Smith* [1940] 1 K.B. 126.

“So far as applicable”: see APPLICABLE.

“So far as is reasonably practicable”: see REASONABLY PRACTICABLE.

See POSSIBLE.

SO FAR AS REASONABLY PRACTICABLE. “There is no doubt that in a significant number of the judgments given in the cases to which we have referred, the effect of s.40 of the [Health and Safety at Work etc Act 1974] has resulted in judges referring to the duty under s.2 and 3 as being subject to a defence, or a limited defence, of reasonable practicability. But as Tuckey LJ made plain in *Davies* in para.8—

‘The duty cast on the defendant is a “duty . . . to ensure as far as is reasonably practicable.” It is a breach of this qualified duty which gives rise to the offence.’

“It seems to us that that is the correct analysis. Even though a legal burden of proof in relation to that aspect of the duty is imposed on the defendant, nonetheless the breach is properly described in the indictment in the present case as we have set out in paragraph 1 above. It follows that the phrase ‘so far as reasonably practicable’ is not a defence.” (*R. v HTM Ltd* [2006] EWCA Crim 1156 per Latham L.J. at [32].)

SO LONG AS. “So long as he shall be unable to maintain himself”: see *M’Intyre v Westwood’s Trustees*, 32 Sc. L.R. 162, cited MAINTAIN.

“So long as any principal money remains due”: see *Re Moss* [1905] 2 K.B. 307, cited DUE.

“So long as she remains unmarried”: see *Re Howard* [1901] 1 Ch. 412; *Re Mason* [1910] 1 Ch. 695, cited UNMARRIED.

“So long as any object of the trust remains unperformed” (Married Women’s Property Act 1882 (c.75) s.11); see *Cousins v Sun Life Assurance Society* [1933] Ch. 126 (trust of policy under this Act held to continue in favour of wife’s estate after her death in lifetime of husband).

“So long as may be necessary to enable any person to board or alight from the vehicle” (London Parking Zones (Waiting and Loading) (Restriction) Regulations 1960 (No.594) reg.4(a)) must be interpreted strictly and will not, for instance, permit a driver leaving his car for five minutes to go up to his flat to collect another passenger (*Clifford-Turner v Waterman* [1961] 1 W.L.R. 1499).

See QUAMDIU.

SO MUCH. “So much as in is lieth”, in a Crown grant: see per Lord Davey, *Simpson v Att-Gen* [1904] A.C. 504, and per Lord Lindley [1904] A.C. 511.

SO NEAR THERETO. See NEAR THERETO AS SHE MAY SAFELY GET.

SO OFFEND. “Shall so offend” a second time (or a third time) (Night Poaching Act 1828 (c.69) s.1) meant “a repetition of the offence of unlawfully entering, or being in, any land for the purpose of taking game, for which proceedings have been taken under the section” (per Alverstone C.J., *R. v Lines* [1902] 1 K.B. 199).

SO SOON AS. Portions to be paid “as soon as conveniently could be”, construed “presently”, because, under the circumstances, “it was then convenient they should have their portions” (*Trafford v Ashton*, 1 P. Wms. 419).

See **WHEN**.

SO THAT. See **IF**; *Re Jones* [1898] 1 Ch. 438, cited **DISPOSAL**.

SO VALUED. Security “so valued” (Bankruptcy Act 1883 (c.52) Sch.2 r.12; see Bankruptcy Act 1914 (c.59) Sch.2 r.13) refers to r.11, and means “the assessed value in the proof” (*Re Vautin* [1899] 2 Q.B. 549, considering *Ex p. Taylor*, 13 Q.B.D. 128, as to which see *Re Button* [1905] 1 K.B. 602, cited **ESTIMATE**).

As to amending proof by re-valuing security, see **AT ANY TIME**; *Re Fanshawe* [1905] 1 K.B. 170.

SOCAGE. “To hold in socage is to hold of any lord lands or tenements, yeelding to him a certaine rent by the yeare for all manner of services”, of which tenure there were three kinds: (1) socage in free tenure, (2) socage in ancient tenure, (3) socage in base tenure:

“Socage in free tenure is when one holdeth of another by fealty and certaine rent for all manner of services;

“Socage of ancient tenure is that where the people held in ancient demesne, which use no other writ to have then the writ of right close, which shall be determined according to the custome of the mannour, and the monstraverunt, for to discharge them when their lord distreyneth them for to doe other services that they ought not to doe;

“Socage in base tenure is where a man holdeth in ancient demesne that may not have the monstraverunt, and for that it is called the base tenure” (*Termes de la Ley*).

Socage in free tenure came to be called free and common socage, and was the origin of modern freehold.

See hereon Litt., ss.117–132; Co Litt. 85B–93B; FRANK FERME.

SOCHEMANS; SOKEMANNI. See **COLEBERTI**. “‘Socmans, alias sokemans, socmanni’, are such tenants as hold their lands and tenements by **SOCAGE** tenure, of which there are several kinds, namely sokemans of frank-tenure; sokemans of basetenure; and sokemans of ancient demesne, which last seem most properly to be called socmans” (Cowel); see also *Termes de la Ley*, *Stockmans*.

SOCIAL. “Inevitably where one has a phrase such as ‘social domestic or pleasure purposes’ used in a policy of insurance there will be cases which fall on one side of the line and cases which fall on the other side. For my part, however much claims managers might wish it otherwise, I do not believe it is possible to state any firm principle under which it can always be predicted which side of the line a particular case will fall. It must depend on the facts of the particular case, and the facts of particular cases will vary infinitely in their detail” (per Roskill L.J., *Seddon v Binions* [1978] 1 Lloyd’s Rep. 381).

As to the meaning of “social welfare” (*Rating and Valuation (Miscellaneous Provisions) Act 1955* (c.9) s.8(1)(a)): see *National Deposit Friendly Society Trustees v Skegness Urban DC* [1959] A.C. 293; *Berry v St. Marylebone BC* [1958] Ch. 406; *General Nursing Council for England and Wales v St. Marylebone BC* [1959] A.C. 540; *Derbyshire Miners Welfare Committee v Skegness Urban DC* [1959] A.C. 807; *Working Men’s Club and Institute Union v Swansea Corporation* [1959] 1 W.L.R. 1197.

The moral, social and physical well-being of the community is not a charitable object (*IRC v Baddeley* [1955] A.C. 572).

“Social or other relationship”: see RELATIONSHIP.

“Social reasons” (Council Directive (67/228/EEC) art.17). The European Court held that there were good “social reasons” within the meaning of this article for applying a zero rate of VAT to the construction of buildings for housing (*EC Commission v UK* (No.416/85) [1988] 3 W.L.R. 1261).

“Social services function” (Local Authority Social Services Act 1970 (c.42) s.7D). It was not clear whether the duty to consult over the proposed closure of a residential home for the elderly was a “social services function” within the meaning of s.7D of the 1970 Act and so it was particularly appropriate for decision by the courts rather than the Secretary of State (*R. v Devon CC, Ex p. Baker* [1995] 1 All E.R. 73).

SOCIAL ADVANTAGES. In the context of Regulation 1612/68 on migrant workers, the reference to “social advantages” requires a wide construction by reference to any advantage generally granted to national workers as a result of their status as workers or by virtue of the fact of residence (*Geven v Land Nordrhein-Westfalen* (Case C-213/05) [2007] 3 C.M.L.R. 45 ECJ).

SOCIAL CARE. Stat. Def., Health and Social Care Act 2012 s.233.

SOCIAL CARE WORKER. Stat. Def., s.55 of the Care Standards Act 2000 (c.14).

See also CARE WORKER.

SOCIAL ENTERPRISE. Stat. Def., Social Services and Well-being (Wales) Act 2014 s.16.

SOCIAL GROUP. “I suggest that membership of a particular social group [in the context of a fear of persecution by reason of membership of a group within the meaning of the 1951 Convention relating to the status of Refugees] exhibits the following uncontroversial and sometimes over-lapping features: (1) some common characteristic, either innate or one of which, by reason of conviction or belief, its members, cannot readily accept change; (2) some shared or internal defining characteristic giving particularity, though not necessarily cohesiveness, to the group, a particularity which, in some circumstances can usefully be expressed as setting it apart from the rest of society; (3) subject to possible qualification that I discuss below, a characteristic other than a shared fear of persecution; and (4) subject to possible qualification in non-state persecution cases, a perception by society of the particularity of the social group.” (*Skenderaj v Secretary of State* [2002] 4 All E.R. 555 at 561, CA per Auld L.J.)

A social group for the purpose of the 1951 Convention on Refugees can be as wide as all women (*K. v Secretary of State* [2006] UKHL 46).

SOCIAL INVESTMENT. Stat. Def., Charities Act 2011 s.292A inserted by Charities (Protection and Social Investment) Act 2016 s.15.

SOCIAL SECURITY INFORMATION. Stat. Def., Social Security Administration Act 1992 s.7B(4) inserted by Welfare Reform Act 2007 s.41.

SOCIAL WORKER. See SOCIAL CARE WORKER.

SOCIETIES. “Such charities, societies, and institutions . . . as S. shall nominate”: see *Re Douglas*, 35 Ch. D. 472.

Communities or societies of the Church of Rome, bound by monastic or religious VOWS: see MONASTIC.

SOCIETY. “Industrial and Provident Society” means a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 (c.12), but does not include a credit union within the meaning of the Credit Unions Act 1979 (c.34).

Stat. Def., “includes any club, institution, organisation or association of persons, by whatever name called” (s.8A of the Betting and Gaming Duties Act 1981 (c.63), inserted by Sch.4 to the Finance Act 2002 (c.23)).

See BUILDING SOCIETY; TERMINATING; FRIENDLY SOCIETY; INDUSTRIAL AND PROVIDENT SOCIETY.

SOCKE. “Socke” (Termes de la Ley, *Priviledges*), or “sok” (*ibid.*, *Sok*), “that is suit of men in your court, according to the custome of the realme” (*ibid.*, *Sok*; see also 2 Inst. 230). See SOKE.

SOEVER. See WHATSOEVER.

SOFTWARE. Stat. Def., Corporation Tax Act 2009 s.1125.

SOIL. This word (and notably in Inclosure Acts) frequently means the surface of the land only, and does not include minerals (*Wakefield v Buccleuch*, L.R. 4 Eq. 613, following *Pretty v Solby*, 26 Bea. 606. *Wakefield v Buccleuch* was reversed, L.R. 4 H.L. 377, but on another ground, see especially judgment of Hatherley C.; see also *Thomson v St. Catherine's College* [1919] A.C. 468); but in the absence of a context it would mean down to the centre of the earth (see hereon *Micklethwait v Winter*, 6 Ex. 644; *Townley v Gibson*, 2 T.R. 701); see also *London & North Western Railway v Evans* [1893] 1 Ch. 16, cited SATISFACTION; see also *Thomson v St. Catherine's College*, above.

Power to “open and break up soil and pavement” of streets, etc.: see OPEN.

See BED; DUST; SUBSOIL; WATER.

SOJOURN. A sojourning means something more than “travelling”, and applies to a temporary, as contradistinguished from a permanent, residence (*Henry v Ball*, 1 Wheaton, 5). Cp. GUEST.

SOKE. A manor or lordship (Elph. 620, citing SPELM., *Soca*; for example, see *Beauchamp v Winn*, L.R. 6 H.L. 243). See also Jacob.

See SOCKE. Cp. SAKE.

SOKEMANNI. See SOCHEMANS.

SOLD. (Inheritance Tax Act 1984 (c.51) Pt VI.) The meaning of “sold” for the purposes of inheritance tax relief depended on its context and could mean either “agreed to be sold” as under a specifically enforceable contract for the sale of land or “conveyed or transferred on completion of sale” (*Jones v Inland Revenue Commissioners* [1997] S.T.C. 358).

See BOUGHT; LAID UP. PURCHASED; SALE.

SOLDIER. A militiaman “is a soldier to all intents and purposes” (per Campbell C.J.), and within the proviso to s.1 of the Poor Removal Act 1846 (c.66) (*Horton v Leeds*, 25 L.J.M.C. 38; 5 E & B. 595); but a workman employed in an Army Works Corps was held not to be a soldier, though he be subject to the Mutiny Act (*Cook v Paxton*, 4 H. & N. 368; but see Army Act 1881 (c.58) s.190(6), below).

A person in the military service of the late East India Company, was a “soldier” within Wills Act 1837 (c.26) s.11 (*Re Donaldson*, 2 Cert. 386). See ACTUAL MILITARY SERVICE. Cp. ON ACTIVE SERVICE.

“The persons subject to military law as soldiers” were enumerated in Army Act 1881 (c.58) s.176; an army pensioner acting as canteen sergeant or steward was

SOLE

included therein (*Ex p. Flint*, 33 W.R. 936); see also *Marks v Frogley* [1898] 1 Q.B. 888; TRAINING. As to what is military law, see *Ex p. Milligan*, 4 Wallace, 141, 142; MARTIAL LAW

Stat. Def., Army Act 1881 (c.58) s.190(6); Air Force (Constitution) Act 1917 (7 & 8 Geo. 5, c.51) Sch.2; Wills (Soldiers and Sailors) Act 1918 (7 & 8 Geo. 5, c.58) s.5; National Health Insurance Act 1924 (14 & 15 Geo. 5, c.38) s.10; Unemployment Insurance Act 1935 (25 Geo. 5, c.8) s.96(10)(d). And see S.R. & O. 1939, No.1944.

“Common soldier” (Finance Act 1894 (c.30) s.8(1)) includes ordinary members of the Local Defence Volunteers or of the Home Guard (*Blyth v Lord Advocate* [1945] A.C. 32).

“Setting out of souldiers”: see CHARITY; PUBLIC CHARITY; SET OUT.

“Officers and soldiers”: see OFFICER.

“Soldier’s will”: see WILL.

See POLICE; MILITARY FORCES; cp. NAVAL SERVICE.

SOLE. The words “sole use and occupation” in an agreement letting part of premises to a tenant is not conclusive of whether the landlord has abandoned control of the rooms let and is thereby not in rateable occupation of them (*Helman v Horsham and Worthing Assessment Committee* [1949] 2 K.B. 335).

“Sole and exclusive fishery” is equivalent to “several fishery” (*Holford v Bailey*, 13 Q.B. 426). So, “sole” is synonymous with a “several” right of pasturage (*Hopkins v Robinson*, 2 Lev. 2).

“Sole and exclusive” right to a book: see *Re Jude* [1906] 2 Ch. 595, cited ASSIGNS.

A grant of the “sole and separate pasture” in A, passes all its pasture without restriction; *secus*, where such a grant is, e.g. “for two cows only” (*North v Coe*, Vaugh. 258.). See PASTURES.

“Sole or main residence”: see MAIN RESIDENCE.

“Sole responsibility” (Immigration Rules (H.C. 160) r.50(e) and (f)). The absence of day-to-day care was not determinative of “sole responsibility” (*Bain v Hugh L.S. McConnell*, 1991 S.L.T. 691 applied) (*Alagon v Secretary of State for the Home Department* (1995) S.L.T. 381 (O.H.)).

“Sole and unmarried”, “sole and intestate”: see UNMARRIED.

“Feme sole”: see FEME.

SOLE AGENT. Where A appoints B as his “sole agent” in a district, A is not entitled to appoint any other agent in that district, nor to effect therein any sales or transactions connected with his business except through B’s agency (*Snelgrove v Ellringham Colliery Co*, 45 J.P. 408). But an agreement that B shall be merely the “sole agent” of a business, though for a defined period, does not import that the business shall be continued during that period (*Rhodes v Forwood*, 1 App. Cas. 256, with which cp. *Ogdens v Nelson* [1904] 2 K.B. 410; *Northey v Trevillion*, 7 Com. Ca. 201; *Emanuel v Fermière de Vichy Cie* [1889] W.N. 150; *Hamlyn v Wood* [1891] 2 Q.B. 488; but see *Turner v Goldsmith* [1891] 1 Q.B. 544, cited AGENT, para.(17)).

The appointment of a person to be the sole agent for the sale of property does not debar the owner from selling the property himself (*Bentall, Horsley & Baldry v Vicary* [1931] 1 K.B. 253). But if another agent sells the property the “sole agent” will be entitled to damages estimated on the probability that he would have earned his commission (*Hampton & Sons v George* [1939] 3 All E.R. 627).

“Sole selling agent”: an appointment as sole selling agent confers an exclusive right to sell the goods. The agreement creates the relationship of vendor and purchaser rather than principal and agent (*WT Lamb & Sons v Goring Brick Co Ltd* [1932] 1 K.B. 710).

As to revocation of a sole agency, see *Vynior's Case*, 8 Rep. 81 b; *Doward v Williams*, T.L.R. 316; *Noah v Owen*, 2 T.L.R. 364.

Cp. “Exclusive right” to supply goods, under EXCLUSIVE RIGHT; “entire services”, under ENTIRE; “whole time”, under WHOLE.

SOLE AUTHOR. See *Tate v Thomas* [1921] 1 Ch. 503.

SOLE CAUSE. “Direct and sole cause”: see DIRECT CAUSE.

SOLE CORPORATION. See CORPORATION.

SOLE DEPENDANT. See DEPENDANT.

SOLE EXECUTOR. “It seems doubtful whether even the appointment, by subsequent will, of a ‘sole executor’ amounts, *per se*, to a revocation of the first. See for revocation *Re Lowe* 33 L.J.P.M. & A. 155; *Re Bailey* L.R. 1 P. & M. 628. Contra, *Geaves v Price* 32 L.J.P.M. & A. 113; *Re Leese* 31 L.J.P.M. & A. 169; *Re Morgan* L.R. 1 P. & D. 323”. (1 JARM. (8TH EDN), 199.)

SOLE FISHERY. See SOLE; FISHERY.

SOLE HEIR. “I make my cousin, Giles Bridges, my sole heir and my executor”; held to pass testator’s lands and the fee simple therein (*Taylor v Web*, Style, 301, 307, 319, and *Marret v Sly*, 2 Sid. 75, cited and commented on in note, 1 Jarm. (8th edn), 473, fn. See also *Doe d. Gillard v Gillard*, 5 B. & Ald. 785, cited EXECUTOR; see also *Parker v Nickson*, 32 L.J. Ch. 397; ACKNOWLEDGE).

SOLE OR MAIN RESIDENCE. For the purposes of s.6(5) of the Local Government Finance Act 1992 (c.14), a person’s “sole or main residence” is the premises in which he actually resides, adjudged by a reasonable interpretation of all the circumstances (*R. (Williams) v Horsham DC* [2004] 1 W.L.R. 1137, CA).

SOLE PASTURAGE. See SOLE.

SOLE RISK. See OWNER’S RISK.

SOLE SETTLOR. As regards accumulation, under Accumulations Act 1800 (3, c.98), see *Re Muir*, 10 Sc. L.T. 448. See Law of Property Act 1925 (c.20) ss.164–166.

SOLE TENANT. See SEPARATELY; SEVERALTY.

SOLE TRUSTEE. This phrase in Trustee Act 1850 (c.60) s.23, included two or more trustees who were solely entitled to any trust property (*Re Hartnall*, 21 L.J. Ch. 384; *Re Hyatt*, 21 Ch. D. 846). See Trustee Act 1925 (c.19) s.51.

SOLE USE. See SOLE.

SOLELY. Building “used solely” for a literary or scientific institution (Income Tax Act 1842 (c.35) s.61 r.6); see *Musgrave v Dundee Magistrates*, 8 Sess. Ca. (4th Ser.) 930, cited LITERARY.

House occupied “solely” for trade or business (Customs and Inland Revenue Act 1878 (c.15) s.13(1)(2)) did not include a house occupied not only for business but also for the actual dwelling of persons, not mere caretakers, who were the servants of the occupier (per Charles J., *Lambton v Kerr* [1895] 2 Q.B. 233). See also *Grant v Langston* [1900] A.C. 383, cited HOUSE; PURPOSES; SERVANT. See also *London & Westminster Bank v Smith*, 87 L.T. 244, cited HOUSE; *Union Bank of Scotland v Inland Revenue Commissioners*, 3 Fraser 771, cited TENEMENT; *Nichols v Malim* [1906] 1 K.B. 272, cited THEREWITH; *Smiles v Merchant Co of Edinburgh*, 17 Rettie 151.

SOLELY

A vehicle sometimes used for the purpose of advertising—being painted and placarded as an advertisement, or used for carrying about a band in order to make public announcement—was not used “solely” in the course of trade so as to give exemption from duty, within Inland Revenue Act 1869 (c.14) s.19(6) (*Speak v Powell*, L.R. 9 Ex. 25). See also *Hanworth v Williams*, 67 J.P. 315, and *Moore v Lewis* [1906] 1 K.B. 27, both cited *CARRIAGE*; *Cook v Hobbs* [1911] 1 K.B. 14, cited *BURDEN*; *Strutt v Clift* [1911] 1 K.B. 1. See *WHOLLY*.

“Solely used for some purpose other than the manufacturing process or handicraft” (Factory and Workshop Act 1901 (c.22) s.149(4)); see *London Co-operative Society Ltd v Southern Essex Assessment Committee* [1942] 1 K.B. 53. See now Factories Act 1937 (c.67) s.151(6), on which see *Cox v Cutler & Sons and Hampton Court Gas Co* [1949] L.J.R. 294.

“Solely seized”: see *Copeslake v Hoper* [1908] 2 Ch. 10, cited *HERIOT*.

A cattle breeding centre is “used solely in connection with agricultural operations” within Rating and Valuation (Apportionment) Act 1928 (c.44) s.2(2) (*Thompson v Milk Marketing Board* [1952] 2 Q.B. 817). A building used for cooling, pasteurising and bottling milk, only one fifth of which had been produced on the ratepayer’s farm, was not used “solely in connection with agricultural operations thereon”. The production of milk and not the more limited operation of cooling, pasteurising and bottling was the “agricultural operation” in question (*Perrins v Draper* [1953] 1 W.L.R. 1178). See also *Farmers’ Machinery Syndicate v Shaw* [1961] 1 W.L.R. 393.

“Solely in connection with agricultural operations” (General Rate Act 1967 (c.9) s.26(4)(a)). A building owned by a farmers’ co-operative in addition to being used by members for the transit of produce, was also frequently used by probationer non-members for the sale of their produce by auction. It was held that this use by non-members amounted to merchandising in an independent commercial and business sense, so that the building was not used “solely in connection with agricultural purposes” (*Corser v Gloucestershire Marketing Society* (1980) 79 L.G.R. 393).

“Solely for the purposes of that hospital” (National Health Service Act 1946 (c.81) ss.6(1), 7(10)). These words were held to cover the case of a home for incurables even although the trustees had powers to sell and apply the proceeds to other charitable purposes (*Re Marjoribanks’ Trust Deed, Frankland v Ministry of Health* [1952] Ch. 181), but not to a fund held on trust to pay the income to an infirmary for a limited period only (*Re Galloway, Hollins v Att-Gen of the Duchy of Lancaster* [1952] 1 All E.R. 1379).

“Solely on the evidence of one witness” (Road Traffic Regulation Act 1984 (c.27) s.89(2)). A person convicted of speeding on the evidence of a police officer based on his opinion of speed calculated from physical and material data such as skid marks, burn marks and vehicle damage, was held not to have been convicted “solely on the evidence of one witness” within the meaning of this section (*Crossland v DPP* [1988] R.T.R. 417).

“48 In our judgment, the reference to ‘solely’ in the European Directive [implemented by the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000] is simply intending to focus upon the fact that the discrimination against a part timer must be because he or she is a part timer and not for some other independent reason. 49 To take a simple example, if the employer decided to discriminate against all part timers over the age of 30 it could be said that there were two reasons for the discrimination; being a part timer, and being of a certain age.

Similarly if the employer deliberately discriminates against all his part timers in factory A but not those with identical full time comparators in factory B. Can it really be said that because only some part timers are selected for the less favourable treatment, the Directive (and by extension the Regulations) are not intended to be applicable? 50 In our judgment it is inconceivable that the Directive was not intended to outlaw such treatment (subject to justification) and we have no doubt whatsoever that it would inevitably be construed by the ECJ to do so. Any other conclusion would wholly undermine the very purpose of the Directive. The fact that not all part timers are treated adversely does not mean that those who are cannot take proceedings for discrimination if being part time is a reason for their adverse treatment.” (*Sharma v Manchester City Council* [2008] I.C.R. 623; [2008] I.R.L.R. 336; (2008) 152(10) S.J.L.B. 29 EAT.)

SOLEMNIZATION. The “solemnization” of a marriage—as the word is used in a marriage settlement as thus, “until the solemnization of the said intended marriage”—means the consummation of a valid and effectual marriage; and the uses or trusts “until” that event are not defeated by the solemnization of an illegal marriage, although it may seem that an illegal marriage was in the contemplation of the parties (*Chapman v Bradley*, 33 L.J. Ch. 139; *Pawson v Brown*, 13 Ch. D. 202; *Neale v Neale*, 15 T.L.R. 20; *Addington v Mellor*, 29 S.J. 131). So, if a marriage be duly declared null and void in consequence of the impotence of either party, it never was “solemnized” (*Re Garnett*, 74 L.J. Ch. 570; applied in *Re Wombwell’s Settlement* [1922] 2 Ch. 298).

SOLEMNLY. Where a thing, e.g. an oath, has to be done “solemnly”, that “does not merely mean religiously, but means with all due solemnities” (per Brett M.R., *Att-Gen v Bradlaugh*, 14 Q.B.D. 667).

SOLICIT. Soliciting a servant to defraud his master: see *R. v De Kromme*, 66 L.T. 301.

An agreement not to “curry or solicit” custom within a named district is broken by a letter soliciting business received in the district though posted outside it (*Cullard v Taylor*, 3 T.L.R. 698). See CARRY ON.

To obtain contributions to a silver watch club was to “solicit, take, or receive, an order” for silver, within Revenue Act 1867 (c.90) s.17 (*Killick v Graham* [1896] 2 Q.B. 196).

It was a “soliciting” an order under the section without having a licence if the solicitation took place at unlicensed premises, although the tradesman was licensed at other premises from which the order was executed (*Elias v Dunlop* [1906] 1 K.B. 266; cp. *Stallard v Marks*, 2 Q.B.D. 412 cited RETAILER); for every “excise licence to carry on any trade or business (except the trade or business of an appraiser, auctioneer, or hawker) only authorises the person to whom the licence is granted to carry on the trade or business mentioned therein in one set of premises to be specified in the licence” (per Lawrence J., *Elias v Dunlop*, above).

“Solicit” (Solicitors Practice Rules 1936 r.4(a)) means “asks for” or “seeks” (*Re A Solicitor* [1945] K.B. 368).

“Solicit for immoral purposes” (Vagrancy Act 1898 (c.39) s.1): see *Horton v Mead* [1913] 1 K.B. 154; *Little v Treadbury* [1910] 2 K.B. 658.

“Persistently to solicit or importune” (Sexual Offences Act 1956 (c.69) s.32) does not include the advertisement of services by a male prostitute by means of a card displayed on a notice board. The person concerned must be physically present (*Burge*

SOLICITOR

v DPP [1962] 1 W.L.R. 265). Persistent importuning by a man of a woman to have sexual intercourse with him is not an offence within this section (*Crook v Edmondson* [1966] 2 Q.B. 81).

A prostitute does not "solicit" (Street Offences Act 1959 (c.57) s.1(1)) unless she is physically present and her conduct amounts to an importuning of prospective customers. The mere display on a notice-board of a card advertising her services is not, therefore, soliciting (*Weisz v Monahan* [1962] 1 W.L.R. 262). A prostitute who sits in a provocative attitude behind an illuminated window so as to advertise her profession to passer-by in the street "solicits in a street" within the meaning of this section (*Behrendt v Burridge* [1977] 1 W.L.R. 29).

"Persistently solicits a woman" (Sexual Offences Act 1985 (c.44) s.2(1)). The act of persistently driving a motor vehicle late at night round an area frequented by prostitutes did not of itself constitute an act of soliciting. Not only is evidence of persistence indispensable for a conviction under this section, it is also necessary for the prosecution to prove that the man said to have been soliciting a prostitute had given some indication, by act or word, to the prostitute, that he required her services (*Darroch v DPP* (1990) 91 Cr.App.R. 378).

See also CALL UPON; TRAVELLER; PERSUADE; ACCESSORY; cp. AID OR ABET.

SOLICITOR. In a High Court action, a solicitor to one of the parties remains his solicitor as long as anything more has to be done in the action, unless his authority is revoked (*Pole v Dick*, 29 Ch. D. 351); but that case left it doubtful as to whether the solicitor's authority continued until the expiration of the time for appealing to the Court of Appeal. That doubt was solved by R.S.C. Ord.7 r.3, which provided that, if there be no change of solicitor, the "solicitor shall be considered the solicitor of the party until the final conclusion of the cause or matter, whether in the High Court or the Court of Appeal". But that doctrine only applied to the High Court; a notice of appeal against a bastardy order was not well served on the solicitor who obtained the order, unless such service was ratified by the applicant (*R. v Oxfordshire Justices* [1893] 2 Q.B. 149); see also per James L.J., *Saffron Walden Society v Rayner*, 49 L.J. Ch. 467, but yet Settled Land Act 1882 (c.38) s.45 (see Settled Land Act 1925 (c.18) s.101) spoke of notice being given "to the solicitor for the trustees, if any such solicitor is known to the tenant for life".

As to the privilege of communications between solicitor and client, see *Bullivant v Att-Gen Victoria* [1901] A.C. 196; *O'Rourke v Darbishire* [1920] A.C. 581; *Conlon v Conlans* [1952] 2 T.L.R. 343.

"Solicitor and own client costs" is a form used in a case where it was desired completely to indemnify the party in whose favour the order was made (49 S.J. 328). See also *Giles v Randall* [1915] 1 K.B. 290; *Goodwin v Storrar* [1947] K.B. 457; R.S.C. Ord.65.

Semble, the offence of "wilfully and falsely pretending to be" a solicitor (Attorneys and Solicitors Act 1874 (c.68) s.37; see Solicitors Act 1957 (c.27) s.19; Solicitors Act 1974 (c.47) s.21) is committed if an unqualified person acts in such a way as to induce the reasonable belief that he is claiming to act or threatens to act as though he were a duly qualified solicitor, and especially is this so if the thing he claims or threatens to do could lawfully be done only by a duly qualified solicitor, e.g. take proceedings for another person (*Re Yandell*, 74 L.T. 436; *Re Fawkes*, 75 L.T. 66; *Re Moss*, 19 L.J. 126; *Re Derome*, 19 L.J. 776; *Re Martin*, 35 S.J. 88, all of which are magistrate's cases); but a conviction was refused where the alleged pretence consisted of a letter saying

that the writer had “instructions” to take out a county court summons if a sum applied for was not paid (*Re Gennari*, 76 L.T. 187). The pretence is chiefly a question of fact for the justices (*Law Society v Bedford*, 49 J.P. 215 where the alleged pretence resembled that in *Re Gennari*). So, if a creditor, when applying to his debtor, threatens to take proceedings for the recovery of the debt, a conviction against the creditor for “pretending to be” a solicitor cannot be supported (*Symonds v Law Society*, 49 J.P. 212). So, a law stationer acting for a solicitor in obtaining probate of a will does not “act as” a solicitor within Solicitors Act 1860 (c.127) s.26 (see Solicitors Act 1932 (c.37) s.45) (*Law Society v Waterlow*, 8 App. Cas. 407); nor if a law stationer enters a *caveat* for a solicitor (*Re Panton* [1901] P. 239); nor does a process server who prepares an affidavit of service which he sends to the solicitor employing him (*Re Louis* [1891] 1 Q.B. 649). Cp. *Re Ainsworth* [1905] 2 K.B. 103, cited PROCEEDING; *Edmundson v Render* [1905] 2 Ch. at 325; *Woodbridge v Bellamy* [1911] 1 Ch. 326; *Freeman v Fox*, 55 S.J. 650, all cited ACT. See also *Hall v Jordan* [1947] 1 All E.R. 826; PRACTISE; CRIMINAL PRISONER.

Whether the use of the description “solicitor” by a person whose name is on the roll of solicitors is a representation that he holds a practising certificate is a question which depends upon the circumstances of the case (*Taylor v Richardson* [1938] 159 L.T. 224).

“Acting as a solicitor” (Solicitors Act 1974 (c.47) s.25(1)). An unqualified person who represented a party in an arbitration was held not to have “acted as a solicitor” within the meaning of this section (*Piper Double Glazing v D.C. Contracts* (1992) Co [1994] 1 All E.R. 177).

Stat. Def., Administration of Justice Act 1925 (c.28) s.29; Judicature Act 1925 (c.49) s.225; Legal Aid and Advice Act 1949 (c.51) s.17(1); Solicitors Act 1974 (c.47) ss.1–3.

See ACTING; APPRENTICE; ATTORNEY; AS SOLICITORS; AVOUÉ; CLIENT; COUNSEL; COUNTY SOLICITOR; MAINTAIN; OFFICER; OFFICIAL; SCRIVENER, note; CAUSE OF ACTION; UNDUE INFLUENCE.

SOLICITOR’S BILL. A bill is a “solicitor’s bill” within the meaning of s.70(1) of the Solicitor’s Act 1974 only if it relates to business which concerned the profession of solicitor and for which the solicitor was employed because he was a solicitor (*Pine v The Law Society* [2002] 2 All E.R. 658, CA).

SOLID MATTER. In Rivers Pollution Prevention Act 1876 (39 & 40 Vict., c.75) s.20, “‘solid matter’ shall not include particles of matter in suspension in water”: see thereon *Ribble River Committee v Halliwell* [1899] 2 Q.B. 385, in which see judgment of Williams L.J. as to the time of testing; this case was followed in *West Riding Rivers Board v Rawson*, 89 L.T. 369. See also *R. v Antrim Justices* [1906] 2 Ir. R. 320, cited DELETERIOUS.

Cp. FILTHY WATER; POLLUTING.

SOLIDATA TERRÆ. 12 acres (Elph. 620).

SOLINUM. “*Unum solinum* or *solinus terræ* in Domesday booke containeth two plow-lands and somewhat lesse than an halfe; for there it is said, *septem solini*, or *solina terræ sunt 17 carucat*” (Co. Litt. 5A). Hargrave’s note to this passage is: “Some think, that *solinus terræ* was frequently synonymous with *carucata terræ*. See Somn. Rom. Ports, 82. Cowel Interpr. edn 1727, voc. *solinus terræ*”.

SOLLAR. The lower part of a house—a room (Elph. 620, citing Spelm. solarium).

SOLVENT

SOLVENT. “Solvent” (Companies Act 1929 (c.23) s.266; see Companies Act 1948 (c.38) s.322) means that the company can pay its debts as they fall due. It does not mean “commercially solvent”, i.e. that the company’s assets exceed its liabilities on balance sheet figures (*Re Patrick & Lyon* [1933] Ch. 786).

SOME. A bequest of “some of my best linen” is uncertain and void (*Peck v Halsey*, 2 P. Wms. 387; cited 1 Jarm. (8th edn), 475).

“Some suit or action”, in Prescription Act 1832 (c.71) s.4, means generally any suit or action in which the claim shall have been or shall be brought into question (*Cooper v Hubbuck*, 12 C.B.N.S. 456, and cases there cited).

“Some other substantial reason”: see SUBSTANTIAL; SUCH.

See ANY; NONE.

SOME OTHER COMPELLING REASON. “The phrase ‘some other compelling reason’ is a robust and stringent test. Various judges have used different words in an attempt to elucidate the phrase. These have included ‘very high prospects of success’, ‘strongly arguable’, ‘legally compelling’, ‘a sufficiently serious legal basis’ and ‘perverse and plainly wrong’. All of these phrases should be read within the context of the decisions in *Cart and Eba*. The clear intention of the Supreme Court was to provide that the courts would only intervene in very exceptional cases where there was a clear need for them to do so.” (*Y.H. for Judicial Review of a Decision of the Upper Tribunal (Immigration and Asylum Chamber)* [2013] ScotCS CSOH 94.)

SOMERS’ (LORD) ACT. 7 & 8 Will. 3, c.25 s.7, against creation of Fagot Votes.

SOMETIME. “‘Sometime’ is in some places put for the time just past, and ‘late’ for the time past long since, for which reason ‘late’, used in the sense of ‘sometime’, may be well permitted, and especially in counts, which, if they have matter of substance, shall never abate (*Wrotesley v Adams*, Plowd. 190).

SON. The word “son” is quite as flexible as the word “heir”, and can as easily be read “issue male” as the word “heir” can be turned into “son” (*Jenkins v Hughes*, 30 L.J. Ch. 870). See also DEFAULT; HEIR; ISSUE; MALE.

“If the word ‘son’ be used, not as a *designatio personæ* but with the view to the whole class or as comprising the whole of the male descendants severally and successively, then it is the manifest intention of the testator to give an estate tail” (per Bayley J., *Mellish v Mellish*, 2 B. & C. 533).

For a collection and discussion of the cases upon the construction of “son” as a word of limitation, see 3 Jarm. (7th edn), 1864, 1876 et seq.; but see thereon *Beauchant v Usticke* [1880] W.N. 14. Whenever that word is so construed it creates an estate in tail male (*Mellish v Mellish*, above).

As to a devise to “a son”, see *Ashburner v Wilson*, 19 L.J. Ch. 330, cited ONE; see also *Re Bleckley* [1920] 1 Ch. 450; ELDEST.

In an appointment of the remainder of a fund “to be equally divided among my sons”, the sons take as a class (*Fitzroy v Richmond*, 28 L.J. Ch. 750).

“Either sons or daughters”, following issue, will control “issue” to mean “children” (*Farrant v Nichols*, 15 L.J. Ch. 259).

“Sons and daughters” mean legitimate ones; unless those that are illegitimate are indicated (see hereon *Edmunds v Fessey*, 30 L.J. Ch. 279; *Re Fish* [1894] 2 Ch. 83; DAUGHTER; CHILD; NEPHEW; RELATIONS).

“Who being a son or sons shall attain 21”, in a limitation which contemplates all the children, will not exclude daughters (*Re Daniel*, 1 Ch. F. 375).

An illegitimate son is not a “son” within the meaning of the Inheritance (Family Provision) Act 1938 (c.45) s.1(1) as amended by the Intestates’ Estates Act 1952 (c.64) ss.7, 8) (*Re Makein, Makein v Makein* [1955] Ch. 194).

Stat. Def., Inheritance (Family Provision) Act 1938 (c.45) s.5; Family Allowances and National Insurance Act 1947 (c.6) s.12(2); Family Provision Act 1966 (c.35) Sch.3 para.5; Companies Act 1967 (c.81) ss.30(2), 31(5); Race Relations Act 1968 (c.71) s.7(4); Housing Act 1969 (c.33) s.86(2); Insurance Companies Act 1982 (c.50) ss.7, 31.

“Son or daughter”: Stat. Def., Social Security Act 1975 (c.14) s.161.

See ELDEST; FIRST SON; OTHER SONS.

SON ASSAULT DEMESNE. See DEMESNE, para.(12).

SON TORT. “Executor de son tort”: see EXECUTOR.

“Trustee de son tort”: see TRUSTEE.

SOONER DETERMINATION. “May be rejected as insensible”: see TERM.

SOPHISTICATION. “He must, for whatever reason and by whatever means, have become trusted by at least two thieves to have been able to buy recently stolen goods for onward sale in his business. That in our judgment is precisely a type of sophistication which the court in *Webbe* had in mind when giving an example of the sort of case in which the handling of stolen goods worth less than £10,000 might well cross the custody threshold. We note, and regard as a factor which supports our interpretation of ‘sophistication’, the proximity in time between the thefts and the handling.” (*R. v Gharib* [2011] EWCA Crim 1257.)

SORCERY. See CONJURATION; WITCH; WITCHCRAFT. Cowel defines the old offence of sorcery as “divination by lots”.

SORT. “Sort”, in the expression “kind or sort”, is probably synonymous with “Quality” or “nature” (see DYE).

SOUGH. A sough is an underground drain or watercourse (*Chamber Colliery Co v Hopwood*, 32 Ch. D. 555, 556). See also *Arkwright v Gell*, 8 L.J. Ex. 201.

SOUGHT. Member or person “sought to be transferred” to another company (Industrial Assurance Act 1923 (c.8) s.23): see *Pearl Life Assurance v Scottish Legal Life Assurance* [1901] 1 K.B. 528; *Bell v Harker*, 44 T.L.R. 33.

SOUND. “I think the word ‘sound’”—in a warranty of a horse—“means that the animal is sound and free from disease at the time he is warranted” (per Parke B. *Kiddell v Burnard*, 11 L.J. Ex. 269). In the same case Alderson B. said, “The word ‘soundness’ is explained and qualified by reference to the purposes for which the warranty is given. Any disease, therefore, which tends to impede the use for which the horse is designed, is an unsoundness”, “use”, there, meaning present use (*Elton v Brogden*, 4 Camp. 281). Thus, a cough, unless it be of quite a temporary character, is unsoundness (*Shillitoe v Claridge*, 2 Chitty, 425; *Elton v Brogden*, above); but in *Garment v Barrs* (2 Esp. 673), Eyre C.J. held that a temporary injury or hurt capable of being speedily cured or removed is not unsoundness.

Mere badness of shape, though rendering a horse incapable of work, is not unsoundness (per Alderson B., *Dickinson v Follett*, 1 Moo. & R. 299); but convexity in the cornea of the eye, making the horse shortsighted and given to shying, is unsoundness (*Holyday v Morgan*, L.J.Q.B. 9).

Neither roaring (*Bassett v Collis*, 2 Camp. 523; *Onslow v Eames*, 2 Starkie, 81), nor crib-biting (*Broennenburgh v Haycock*, Holt N.P. 630), is unsoundness.

Bone spavin in the hock is unsoundness, though producing no present apparent lameness (per Tindal C.J., *Watson v Denton*, 7 C. & P. 85); so is a visible splint on the fore leg, producing subsequent lameness, though the warranty be limited to the condition “at the time of the contract”, because the jury found that the seeds of unsoundness were then existing (*Margetson v Wright*, 1 L.J.C.P. 128).

A nerved horse (*Best v Osborne*, Ry. & Moo. 290), or one chest-foundered (*Atterbury v Fairmanner*, 8 Moore C.P. 32), is unsound.

A receipt “for a grey four-year-old colt, warranted sound in every respect”, is a warranty only for the soundness, not for the age (*Budd v Fairmanner*, 1 L.J.C.P. 16).

For a bag of potatoes to be “sound” within the terms of a contract to purchase “sound bags only” there must not be any but a “negligible” amount of blight (*Glass’s Fruit Markets v Southwell, A. & Son (Fruit)* [1969] 2 Lloyd’s Rep. 398).

“32. The concept of ‘soundness’ is not defined in the PCPA 2004. However, para. 182 of the NPPF supplies four tests for soundness to which regard should be had. The first is that a plan should be ‘positively prepared’, meaning that it ‘should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements ...’. The second test is that the plan should be ‘justified’, that is it ‘should be the most appropriate strategy, when considered against reasonable alternatives, based on proportionate evidence’. Thirdly, a plan should be ‘effective’ in the sense that it ‘should be deliverable over its period ...’. The fourth test has been dealt with in para. 18 above.” (*West Berkshire District Council Reading Borough Council v Department for Communities And Local Government* [2015] EWHC 2222 (Admin).)

“Sound construction” (Factories Act 1937 (c.67) s.25(1)) meant sound construction for the purpose for which the factory was intended to be used (*Mayne v Johnstone and Cumbers* [1947] 2 All E.R. 159).

“Sound management” (Agricultural Holdings Act 1948 (c.63) s.25(1)(b)). The price at which electricity is supplied to a farm is not something which can affect the “sound management” of the farm for the purposes of this section. It merely concerns landlord’s finances (*National Coal Board v Naylor* [1972] 1 W.L.R. 908).

“Sound material” (Factories Act 1937 s.22(1)): a lift rope was not of “sound material” if a defect could have been detected by means of X-rays (*Whitehead v James Stott* [1949] 1 K.B. 358).

What was once regarded as a doctrine that a “sound price”, i.e. a full price, implied a warranty, was rejected by Mansfield C.J. as a popular error (see *Broennenburgh v Haycock*, para.(1) (c), above).

Breach of contract “sounding in damages”: see LIQUIDATED DAMAGES.

“Sound recording”: Stat. Def., Copyright Act 1956 (c.74) s.12.

See VICE; WARRANTED SOUND.

SOUND EQUIPMENT. Stat. Def., “means equipment designed or adapted for amplifying music and any equipment suitable for use in connection with such equipment” (Criminal Justice and Public Order Act 1994 (c.33) s.64(6)).

SOURCE. The meaning of the word “source” in s.30 of the Finance Act 1926 (c.22) and s.21 of the Finance Act 1951 (c.43) which dealt with the acquisition of a new source of income or of an addition to a source of income by the taxpayer, was held to be indistinguishable from the word “origin” (*Hart v Sangster* [1956] 1 W.L.R.

1105). There is no rule of law which says that the “source” of income is the place at which the work is done for which payment is being made (*Commissioner of Taxation (Cth.) v Mitchum* (1965) 39 A.L.J.R. 23).

See ONE TIME.

SOURCES. “98. This argument is inconsistent with the sense in which the word ‘sources’ is used in art.23(3). That provision explains how the expression, ‘profits or income from sources within the United States’, in art.23(2), is to be applied. The general rule is that ‘income or profits derived by a resident of a contracting state which may be taxed in the other contracting state in accordance with this Convention shall be deemed to arise from sources within that other contracting state’. As I have explained, one has to look elsewhere in the Convention in order to discover whether particular profits or income may be taxed in the US in accordance with the Convention, and are therefore ‘profits or income from sources within the United States’ for the purposes of art.23(1) and (2). Articles 6 to 22 of the Convention contain ‘distributive’ provisions allocating taxing powers between the UK and the US in relation to a range of different types of profits and income, and different categories of taxpayer. This has nothing to do with the schedular source doctrine of UK tax law. It is only ‘where the United States taxes on the basis of citizenship’ that art.23(3) refers, exceptionally, to ‘sources ... as determined under the laws of the United Kingdom’. As Arden LJ observed in *Bayfine UK v Revenue and Customs Comrs* [2011] EWCA Civ 304; [2012] 1 WLR 1630, para.23, ‘art. 23(3) contains its own rule as to how source [is] to be determined, save where tax has been imposed on the basis of citizenship’.” (*Anson v Revenue and Customs* [2015] UKSC 44.)

SOUTHWARK. Southwark Market was established by Southwark Market Acts 1755 (c.23), and 1757 (c.31). See also London Government Scheme (Southwark Borough Market) Confirmation Act 1907 (c. xlv). See hereon *Haynes v Ford* [1911] 2 Ch. 237.

SOUVENIR. Not every item bought by a tourist becomes for that reason, a “souvenir” within the meaning of ss.47 and 59 of the Shops Act 1950 (c.28), as amended by s.31 of the Criminal Justice Act 1972 (c.71). Sweaters and vases were held not to be “souvenirs” within the meaning of these sections (*York City Council v Little Gallery, The Times*, December 2, 1985).

SOVEREIGN. “Sovereignty”: a government which exercises de facto administrative control over a country and is not subordinate to any other government in that country is a foreign sovereign state (*The Arantzazu Mendi* [1939] A.C. 256).

Jersey is not a “sovereign state” for the purposes of the Carriage of Goods by Road Act 1965 (c.37) (*Chloride Industrial Batteries v F & W Freight* [1989] 1 W.L.R. 823).

“Done by it in the exercise of sovereign authority” (State Immunity Act 1978 (c.33) s.14(2)(a)). The forcible confiscation and retention of 10 civilian aircraft from Kuwait by Iraqi Airways Co (a corporation owned by the Republic of Iraq), at the direction of the government, was an activity done in the exercise of “sovereign authority” within the meaning of this section (*Kuwait Airways Corp v Iraqi Airways Co, The Times*, October 27, 1993).

See CROWN; QUEEN.

SOVEREIGN GRANT. Stat. Def., Sovereign Grant Act 2011 s.1.

SOWM. A power to a lessor “‘to sowm or fix the number of sheep, cattle, and horses to be kept by each tenant and on each possession’, is plainly referable only to cases of pasturage held in common. The very word ‘sowming’ pre-supposes several

small tenants on one farm, and has no application to a farm held by a single tenant” (per Stormonth Darling L.O., *MacLaine v Stewart*, 36 Sc. L.R. 235; see also 37 Sc. L.R. 623).

SPACE. “Space occupied by the goods” (Merchant Shipping Act 1894 (c.60) s.85(2)) means (when the “goods” are horses or cattle) the space occupied by the animals with reasonable facilities for their movements (*Richmond Hill SS Co v Trinity House* [1896] 2 Q.B. 134).

“Open space”: see OPEN.

See FREE SPACE; CLEAR SPACE.

SPAM. “1. This is a case about spam, which for present purposes is adequately defined as unwanted email sent in bulk. It can also be described as the internet version of junk mail.” (*Ames v Spamhaus Project Ltd* [2015] EWHC 127 (QB).)

SPARE. What can be “spared”: see *Beverley v Att-Gen*, 15 Bea. 546; reversed 6 H.L. Cas. 310. Cp. LEFT.

SPATIAL. “I am sorry that the noble Lord, Lord Dixon-Smith, objects to the term ‘spatial’. On his first tack his references to being in orbit suggested a Star Trek connotation. This has nothing to do with that. It is very much down to earth in relation to the use of space and place. We make no apology for introducing a new term into planning law, which is precisely what we are doing. In this instance it could well be that insisting on the familiar could limit the intention of this part of the Bill. We are bringing in a new type of planning instrument for a new type of authority. The word was chosen advisedly and has some significance. It is the first time it has been used in English law, but it is important that we move in that direction. The term is intended to embrace more than just the conventional development and use of land concepts, and should include the spatial—that is to say, the geographical—elements of transport, economic development and other strategies, bringing them together in one single comprehensive framework for London’s future development. As the noble Baroness said, this is not an unfamiliar term to planners, particularly those who have operated beyond this country. It is a term that is well understood in countries such as the Netherlands and Germany where ‘spatial planning’ or similar terms signify an integrated approach to public policy. The results in many German and Dutch cities are there to be seen. The term is now being used in our own draft guidance which my department recently issued on regional planning guidance—PPG 11. So we are moving in the direction of using this term more widely. The main purpose of the spatial development strategy would be to provide longer-term strategic guidance on the broad location of housing, industry, transport provision and other infrastructure. But it will also affect matters that are strictly related to the use and development of land, matters which may be taken forward outside the statutory planning system; for example, transport investment priorities and integration, road user charging policies or economic regeneration projects as a whole. It is a new concept. My belief is that the noble Lord’s amendment will narrow that concept and I urge the Committee to stick with the new, wider and I suggest more visionary view of how this should develop under the new authority.” (Speech of Lord Whitty (Government Minister) in Committee on the Bill for the Greater London Authority Act 1999 s.41, HL Deb, June 21, 1999, Vol.602, cc.737–76.)

SPEAKER. Stat. Def., Representation of the People Act 1949 (c.68) s.163.

SPECIAL ACT. A special Act of Parliament is one that is “directed towards a special object, or special class of objects” (per Lord Hatherley, *Garnett v Bradley*, 3

App. Cas. 950); its antithesis is a general or public Act of Parliament: see hereon *R. v D'Oyly*, 12 A. & E. 139; *Baird v Tunbridge Wells* [1894] 2 Q.B. 867, [1896] A.C. 434; *Hill v Haire* [1899] 1 I.R. 87. "The rule that a Special Act is not repealed by a subsequent General Act, unless an intention to repeal is expressed or necessarily implied, is laid down in numerous cases, of which *Hawkins v Gathercole* (24 L.J. Ch. 332), *Thorpe v Adams* (L.R. 6 C.P. 125), and *Fitzgerald v Champneys* (30 L.J. Ch. 777) are good examples" (per Smith L.J., *Baird v Tunbridge Wells*, 64 L.J.Q.B. 151). But see *Att-Gen v Exeter*, 80 L.J.K.B. 636, cited FINE.

SPECIAL ADAPTABILITY. Special adaptability of land for waterworks: see *Re Lucas and Chesterfield Water Board* [1909] 1 K.B. 16, cited WATERWORKS.

"Special suitability or adaptability of the land" (Acquisition of Land (Assessment of Compensation) Act 1919 (c.57) s.2(3)): see *Pointe Gourde Quarrying & Transport Co v Sub-Intendant of Crown Lands* [1947] A.C. 565, cited PURPOSE, para.(11).

SPECIAL ADVISER. Stat. Def., Constitutional Reform and Governance Act 2010 s.15.

Stat. Def., Lobbying (Scotland) Act 2016 s.47.

SPECIAL APPLICATION. "Special application or appropriation" of donation to a CHARITY (Charitable Trusts Act 1853 (c.137) s.62): see *Sons of Clergy Corporation v Skinner* [1893] 1 Ch. 178.

SPECIAL AREAS. "Special areas" (Vermin Destruction (Victoria) Act 1890): see *King v Cheyne* [1900] A.C. 622.

Stat. Def., Inner Urban Areas Act 1978 (c.50) s.8.

SPECIAL CASE. A special case is a written statement of the facts in a litigation, agreed to by the parties, so that the court may decide the questions in issue according to law: see VERDICT. See hereon 3 B1. Com. 378. It is also known as a case stated.

SPECIAL CIRCUMSTANCES. "Special circumstances" (R.S.C. Ord.47 r.1(1)(a)) are circumstances which go to the enforcement of the judgment and not those which go to its validity (*T.C. Trustees v Darwen (J.S.) (Successors)* [1969] 2 Q.B. 295). See also *Ellis v Scott (Practice Note)* [1964] 1 W.L.R. 976).

"Special circumstances" (the old R.S.C. Ord.53A r.4): see *Re Beldams Patent* [1911] 1 Ch. 60. See also *Re a Debtor*, 55 S.J. 48, as to special circumstances for extending the time for a bankruptcy appeal; *Re Barley* [1922] B. & C.R. 258; and *Re Cohen* [1950] 2 All E.R. 36, as to special circumstances for rescinding a receiving order.

Protracted litigation is a "special circumstance" within the old R.S.C. Ord.58 r.15, justifying an unusually large deposit as security for costs on an appeal (*Re McHenry*, 17 Q.B.D. 351; but see thereon *Re Phillips* [1896] 2 Q.B. 122). Insolvency, or other proved inability to pay costs of appeal if the appellant should be unsuccessful, is generally the "special circumstance" acted on under r.15 for ordering a deposit as security for costs on an appeal to the Court of Appeal, but the rule is not confined to such cases (*Wheldon v Maples*, 20 Q.B.D. 331; *Brooke v Kavanagh*, 21 L.R. Ir. 474; but see thereon *McDougall v Copestake*, 34 S.J. 347). If the appeal is seen to be frivolous (*Usill v Hales*, 3 C.P.D. 206), or the appellant be a foreigner having no assets in England (*Grant v Banque Franco-Egyptienne*, 47 L.J.C.P. 41), there would be such a "special circumstance". A mistake of legal advisers is not by itself a special circumstance, though the addition of other factors may amount to special circumstances (*Re Macadam (No.2)*, *Ex p. Guillaume v The Trustee* [1950] 1 All E.R. 659).

Special circumstances for stay of execution pending an application for a new trial: see *Monk v Bartram* [1891] 1 Q.B. 346.

Any other "special circumstances" (Judicature Act, 1925 (c.49) s.162(1)). The words relate only to special circumstances in connection with the estate itself or the administration of the estate; they do not extend to protecting a beneficiary against himself or herself (*Re Edwards-Taylor* [1951] P. 24). There are "special circumstances" within the meaning of this section, as amended, justifying the passing over of an executor, if he is old, ill and vehemently opposed to obtaining probate (*In the Estate of Biggs* [1966] P. 118), or is serving a sentence of life imprisonment (*In the Estate of S.* [1968] P. 302), or if she is a widow with a claim against the estate for personal injuries (*In the Estate of Newsham* [1967] P. 230). *Re Edwards-Taylor*, above, was considered and seems to have been disapproved in *Re Clore (Deceased)* [1982] 2 W.L.R. 314; [1982] 3 W.L.R. 228, where it was held that "special circumstances" within the meaning of this section are not limited to circumstances connected with the estate or its administration and could as here, cover the fact that both executors lived abroad.

As to what may constitute special circumstances in the case of a newspaper libel, justifying the defendants being compelled to disclose the name of the informants of the statements complained of, see *Lyle-Samuel v Odhams Ltd* [1920] 1 K.B. 135.

"Special circumstances" (Finance Act 1965 (c.25) s.44(3)). The fact of takeover negotiations being in a final stage is not a "special circumstance" which displaces a stock market price as a measure of a share's value for capital gains taxes (*Crabtree v Hinchcliffe* [1972] A.C. 707).

"Special circumstances" (Factories Act 1937 (c.67) s.15(2)) had to be something which was being continually repeated or so often repeated as to be "specially liable", i.e. more than usually liable, to cause accidents (*Harris v Rugby Portland Cement Co* [1955] 1 W.L.R. 648).

In order to constitute "special circumstances" excusing failure to give notification of pending redundancies under s.99(8) of the Employment Protection Act 1975 (c.71), the circumstances must be uncommon or out of the ordinary. Insolvency alone is not a "special circumstance" within the meaning of this section (*Clarks of Hove v Bakers' Union* [1978] 1 W.L.R. 1207). Nor is ignorance of the requirements of this section concerning consultation with the union (*Union of Construction, Allied Trades and Technicians v H Rooke and Son* [1978] I.C.R. 818). The economic necessity to close down a business was not of itself a "special circumstance" within the meaning of this section. Nor was the mistaken but genuine belief that there was no union to notify and consult (*Joshua Wilson and Brothers v USDA* [1978] 3 All E.R. 4).

Ignorance of a company's obligation to notify the Secretary of State of impending redundancies cannot constitute "special circumstances" making it not reasonably practicable to comply with this obligation under s.100(6) of the Employment Protection Act 1975 (c.71) (*Secretary of State for Employment v Helitron* [1980] I.C.R. 523).

"Special circumstances" in which leave to appeal out of time may be allowed under the Immigration Appeals (Procedure) Rules 1972 (SI 1972/1684) r.11(4) should not be too narrowly interpreted (*R. v Secretary of State for the Home Department, Ex p. Mehta* [1975] 1 W.L.R. 1087).

"Because of special circumstances" (Housing Act 1985 (c.68) s.61(1)(d)). The desirability for children with reading difficulties to continue to attend the same school

could be a "special circumstance" for concluding that there was a "local connection" with a particular authority within the meaning of this section (*R. v Harrow LBC, Ex p. Carter, The Times*, November 3, 1992).

A large damages claim, high costs and a narrow margin between the amount of the final judgment and payments into court could amount to "special circumstances" which could justify an award of costs in favour of a defendant even where a plaintiff had beaten the payment in (*Charm Marine Inc v Elbourne Mitchell* [1997] 10 C.L. 61).

SPECIAL CONSIDERATION. In giving "special consideration" under para.51 of the Statement of Changes in Immigration Rules 1983 (H.C. 169) to the needs of a fully dependent and unmarried daughter over 18 and under 21 who applied for entry to the United Kingdom, the immigration appeal tribunal should adopt an approach of broad humanity, so as not to disregard her needs for a home and financial support simply on the narrow ground that her sponsor in the United Kingdom was already providing both abroad (*R. v Immigration Appeal Tribunal, Ex p. Kara* [1989] Imm.A.R. 20).

SPECIAL CONSTABLES. Special constables (not legally exempt from serving as constables) who were resident in a disquieted parish, township, or place, or its neighbourhood, whom two or more justices should call upon to act as special constables (Special Constables Act 1831 (c.41) s.1): *R. v Vincent*, 9 C. & P. 91; *R. v Porter*, 9 C. & P. 778; but "all persons willing to act", wherever resident, might be appointed (Special Constables Act 1835 (c.43) s.1). A special constable had all the authority of an ordinary CONSTABLE, and remained a constable until his services were determined under Special Constables Act 1831 s.9 (*R. v Porter*, above).

SPECIAL DAMAGE. "Special damage", in contract or in tort, when shown and how pleaded: see judgment by Bowen L.J., *Ratcliffe v Evans* [1892] 2 Q.B. 524. That learned judge there points out that "such damage is called variously in old authorities 'express loss', 'particular damage' (*Cane v Golding Style*, 169, 176), 'damage in fact', 'special or particular cause of loss' (*Lawe v Harwood Cro. Car.* 140; *Tasburgh v Day Cro. Jac.* 484)"; also that "special damage" has been used to denote the actual and particular loss to an individual from a public nuisance (*Iveson v Moore*, 1 Raym. Ld., 486; *Rose v Groves*, 12 L.J.C.P. 251).

"Special damage", in slander, does not include loss of *consortium vicinorum*: see *Roberts v Roberts*, 33 L.J.Q.B. 249; see hereon *Lynch v Knight*, 9 H.L. Cas. 577. As to the loss of the hospitality of friends, if that involves a pecuniary loss, see *Davies v Solomon*, L.R. 7 Q.B. 112. Illness alleged to have been caused by the slander is too remote: see *Allsopp v Allsopp*, 29 L.J. Ex. 315. See also SLANDER.

Special damage, for nuisance to highway: see *Campbell v Paddington* [1911] 1 K.B. 896, cited NUISANCE.

"Special damages" (Sale of Goods Act 1893 (c.71) s.54): see *Bostock v Nicholson* [1904] 1 K.B. 725, cited LOSS.

SPECIAL DANGER. "Life being in special danger" on the occurrence of which a deed should be dated and carried into effect, see *Re Duke of Devonshire's Settlements* [1952] T.R. 375).

SPECIAL DEFENCE. See STATUTORY.

SPECIAL DIET. (Supplementary Benefit (Requirements) Regulations 1983 (SI 1983/1399) reg.11 Sch.4 para.14): see CONDITION.

SPECIAL DIRECTIONS. "Special directions" from guardians authorising a prosecution under the Vaccination Acts: see *R. v Brocklehurst* [1892] 1 Q.B. 566.

SPECIAL EDUCATIONAL NEEDS. In relation to children and adults, Stat. Def., Education Act 1994 (c.30) s.19(3).

Stat. Def., Children and Families Act 2014 s.20.

SPECIAL EDUCATIONAL PROVISION. A “special educational provision” within the meaning of s.1(3) of the Education Act 1981 (c.60) is one which was called for by a learning difficulty, such as, as in this case, dyslexia, and is not limited to educational provision available only in independent schools. Provision available within a local education authority’s schools could be a “special educational provision” within the meaning of this section (*R. v Hampshire CC, Ex p. J., The Times*, December 5, 1985). Speech therapy would be a “special educational provision” within the meaning of this Act (*R. v Lancashire CC, Ex p. C.M. (A Minor)* (1989) 19 Fam. Law 395).

Stat. Def., Children and Families Act 2014 s.21.

SPECIAL ENTERTAINMENT. See *Lamb v Brown*, 31 Sc. L.R. 518, and *Lamb v Stott*, 36 L.R. 913, cited ENTERTAINMENT.

SPECIAL EXECUTOR. See PERSONAL REPRESENTATIVES.

SPECIAL EXPENSES. Local Government Act 1888 (c.41) s.68: see *Bury St. Edmunds v West Suffolk CC* [1898] 2 Q.B. 246.

A district council cannot by resolution declare to be “special expenses” within the meaning of the Local Government Act 1972 (c.70) s.147(1)(3) any expenditure incurred acting as a contractor for some other local authority or public body (*Randall v Tendring District Auditor* (1980) 79 L.G.R. 207).

Public Health Act 1875 (c.55) ss.229, 230: see *Darenth Valley v Dartford*, 19 Q.B.D. 270; *Lancashire & Yorkshire Railway v Bolton*, 15 App. Cas. 323; *Sheffield v Bradfield*, 7 T.L.R. 571; *Jersey v Uxbridge* [1891] 3 Ch. 183, cited GENERAL EXPENSES; *Horn v Sleaford* [1898] 2 Q.B. 358.

SPECIAL FEE. “Special fees to counsel” (the old R.S.C. Ord.65 r.27(29)): “special fee”, i.e. a fee paid to counsel who will only go into court on payment of a special fee in addition to the usual fees. But it is not limited to that. ‘Special fees’, there, mean unusual or extraordinary, or generous, fees” (per Buckley J., *Cavendish v Strutt* [1904] 1 Ch. 531). See hereon *Re Parson*, 70 L.J. Ch. 563; *Giles v Randall* [1915] 1 K.B. 290. But see now R.S.C. Ord.62 r.29.

SPECIAL GROUNDS. “Special grounds” justifying an order for costs on the higher scale (the old R.S.C. Ord.65 r.9, but see now Ord.62 r.32), must relate to the importance or difficulty of the cause or matter, e.g. as requiring a class of witnesses more than usually expert and expensive; but the largeness of the amount involved, and charges of misrepresentation or fraud, are not such grounds (*Williamson v North Staffordshire Railway*, 32 Ch. D. 399; *Paine v Chisholm* [1891] 1 Q.B. 531; *Assets Development Co v Close* [1900] 2 Ch. 717). So, great ability and diligence are not such “special grounds” (*Rivington v Garden* [1901] 1 Ch. 561). Cp. *Nolan v Great Northern Railway* [1902] 2 Ir. R. 431, cited EXCEPTIONAL. See also 116 L.T. 111.

“Special grounds” for admitting further evidence on an appeal (the old R.S.C. Ord.58 r.4, but see now Ord.59 r.10): *Re Chennell*, 8 Ch. D. 492; *Arnison v Smith*, 58 L.J. Ch. 645.

“Special grounds” for excusing a husband from joining a co-respondent in a divorce action (Matrimonial Causes Act 1857 (c.85) s.28) had to be shown by satisfactory affidavits (*Jones v Jones* [1896] P. 165), one by the husband, uncorroborated, being insufficient (*Barber v Barber* [1896] P. 73). As to what were such grounds, see *Hooke*

v Hooke, 27 L.J.P. & M. 61; *Quicke v Quicke*, 31 L.J.P. & M. 28; *Jinkings v Jinkings*, L.R. 1 P. & D. 330; *Saunders v Saunders* [1897] P. 89; *Sage v Sage*, *Stockbridge v Stockbridge* [1947] P. 71.

SPECIAL HEALTH AUTHORITY. Stat. Def., National Health Service Act 2006 s.28.

SPECIAL INDORSEMENT. A special indorsement of a writ, under R.S.C. Ord.3 r.6, now Ord.6 r.2, must contain particulars of goods, etc. sued on, giving dates, so as to clearly show what the action is for (*Parpaite v Dickinson*, 38 L.T. 178; *Walker v Hicks*, 3 Q.B.D. 8; *Godden v Corsten* [1879] W.N. 190), or a reference to an account rendered giving such particulars (*Aston v Hurwitz*, 41 L.T. 521). For examples, see Appendix C. s.4 of the Rules; see also *Smith v Wilson*, 4 C.P.D. 392; 5 C.P.D. 25; *Bickers v Speight*, 22 Q.B.D. 7.

SPECIAL INTEREST. “Special architectural or historic interest” (Town and Country Planning Act 1947 (c.51) s.29(1)): a building may be of “special, etc. interest”: (a) by reason of its own intrinsic qualities, and (b) by reason of the qualities derived from its setting and so qualify for a building preservation order (*Iveagh v Minister of Housing and Local Government* [1964] 1 Q.B. 395).

SPECIAL INVESTMENT FUNDS. “. . . it must be observed that Article 13B(d)(6) of the Sixth Directive lays down no definition of the words ‘special investment funds’. In para.53 of its judgment in *Abbey National* the Court held that Article 13B(d)(6) of the Sixth Directive covers special investment funds whatever their legal form. Undertakings for collective investment constituted under the law of contract or trust law, and those constituted under statute both come within the scope of that provision.” (*JP Morgan Fleming Claverhouse Investment Trust Plc, The Association of Investment Trust Companies v The Commissioners of HM Revenue and Customs* (Case C-363/05) ECJ at [25]–[26].)

SPECIAL LEAVE. Where a thing cannot be done “without special ‘leave’”, that means “without leave granted on special grounds” (*Thompson v Partridge*, 23 L.J. Ch. 158; *Re Malcolmson*, Ir. Rep. 10 Eq. 488). See also SPECIAL GROUNDS.

SPECIAL LICENCE. “The ‘special licence’ mentioned in the Statute of Marlbridge, 1267 (c.23) s.2, is commonly expressed by the well-known phrase ‘without impeachment of waste’” (*Woodhouse v Walker*, 5 Q.B.D. 404).

“Marriage by special licence”: see Ecclesiastical Licences Act 1534 (c.21); the right of the Archbishop of Canterbury to grant these licences was preserved by s.20 of the Marriage Act 1823 (c.76) s.20, and by s.1 of the Marriage Act 1836 (c.85). See hereon *Doe d. Egremont v Grazebrook*, 4 Q.B. 406; PHIL. ECC. LAW, 612, 613.

SPECIAL LIMITS. See GENERAL LIMITS.

SPECIAL MEETING. “Special meeting” connotes that the persons to be convened shall have notice of the purpose of the meeting (per Alderson B., *Cutbill v Kingdom*, 1 Ex. 504).

SPECIAL METHODS. “Special methods or processes of manufacture” (Patents and Designs Act 1907 (c.29) s.38A): see *Re M.’s Application*, 39 R.P.C. 261; *Re W.’s Application*, 39 R.P.C. 263. Cp. Patents Act 1949 (c.87) s.41.

SPECIAL OCCASION. “Special occasion” (Licensing Act 1964 (c.26) s.74(4)). It is not essential that there should be some event completely external to the applicant for there to be a “special occasion” justifying a special order of exemption under this section (*Knole Park Golf Club v Chief Superintendent, Kent County Constabulary* [1979] 3 All E.R. 829). It must, however, be special from a national or local point of

view and not too frequent (*Martin v Spalding* [1979] 1 W.L.R. 1164). See also *R. v Corwen Justices, Ex p. Edwards* [1980] 1 All E.R. 1035 where the Divisional Court in giving guidance to justices listed three questions they should consider: (1) is the occasion one capable in law of being a “special occasion”; (2) is the occasion, on the material before the justices, in fact a special occasion in the locality; and (3) if so, whether as a matter of discretion the application should be granted. The occasion must be “special” in the ordinary sense of the word, it must be related to a national or local event, and those who are to benefit from the extension are to participate in one form or another in the event. The presentation in a cinema of a boxing match by closed circuit television from the USA was not a “special occasion” for the purposes of this section (*R. v Commissioner of Police of the Metropolis, Ex p. Maynard, The Times*, June 9, 1982). Twelve shooting occasions were held not to be “special” within the meaning of this section (*Chief Constable of Kent v Deager* (1983) 147 J.P. 105).

(Licensing Act 1964 (c.26) s.74(4).) The frequency of any occasion is relevant to the question whether it is “special” for the purposes of this section, and plainly the greater the frequency of any occasion the less “special” it is likely to be (*Paulson v Oxford City Magistrates’ Court* [1989] C.O.D. 464).

SPECIAL OCCUPANT. “Special occupant” of an estate *pur autre vie* (Wills Act 1837 (c.26) ss.3, 6): see *Mountcashell v More-Smyth* [1896] A.C. 158; *Re Sheppard* [1897] 2 Ch. 67; *Re Michell* [1892] 2 Ch. 87; *Northern v Carnegie*, 28 L.J. Ch. 930; *Wall v Byrne*, 2 J. & La T. 118; *King v King* [1899] 1 I.R. 30. These last two cases laid down a rule in Ireland which is not recognised in England (*Re Irman* [1903] 1 Ch. 241).

SPECIAL POLICE FORCE. Stat. Def., Crime and Courts Act 2013 s.16.

SPECIAL POLICE SERVICES. (Police Act 1964 (c.48) s.15(1).) The provision of police officers to attend inside the football ground when matches were being played there was the provision of “special police services” within the meaning of this section (*Harris v Sheffield United Football Club* [1987] 3 W.L.R. 305).

“I agree that it is impossible to lay down a comprehensive definition of ‘special police services’ and that the particular circumstances are likely to be critical. . . . It does, however, seem to me that one of two key features is ordinarily likely to be present. Either the services will have been asked for but will be beyond what the police consider necessary to meet their public duty obligations, or they are services which, if the police do not provide them, the asker will have to provide from his own or other resources. Essentially, however, ‘special police services’ will be something that someone wants, hence the importance of the link in [s.25(1) of the Police Act 1996 (c. 16)] with a request.” (*West Yorkshire Police Authority v Reading Festival Ltd* [2006] EWCA Civ 524 per Scott Baker L.J. at [66].)

SPECIAL POWER. Special power of appointment, how executed: see POWER; *Re Hayes*, 69 L.J. Ch. 591; affirmed [1901] 2 Ch. 529; *Re Huddleston* [1894] 3 Ch. 595, cited MY; *Re Sharland* [1899] 2 Ch. 536; Farwell (3rd edn), Ch.5. Cp. GENERAL POWER.

A special power is fiduciary, and the donee cannot covenant to exercise it in a particular way, though he may release it (*Re Bradshaw* [1902] 1 Ch. 447, cited GENERAL POWER). As to gathering from a will whether or not the testator had at the time a special power in his mind, see *Wrigley v Lowndes*, 77 L.J.P. 149; *Re Cooke* [1922] W.N. 45.

SPECIAL PROPERTY. Special property in animals *feræ naturæ*, and goods: see 2 Bl. Com. 391 et seq.

SPECIAL PURPOSE. Notice specifying "special purpose" of a vestry meeting (Vestries Act 1818 (c.69) s.1): see *R. v Powell*, L.R. 8 Q.B. 403; *Rand v Green*, 9 C.B.N.S. 470; *Smith v Deighton*, 8 Moore P.C. 179.

SPECIAL REASON. "Special reasons" (Road Traffic Act 1972 (c.20) s.93(1); Road Traffic Offenders Act 1988 (c.53) s.34(1)). Where a driver is liable to disqualification for a second offence, circumstances special to the first offence cannot be "special reasons" for the second (*Bolliston v Gibbons* [1985] R.T.R. 176). When a defendant in a laced drink case seeks to avoid disqualification by adducing special reasons, the court must consider whether he should have realised, as in this case, that he was unfit to drive (*Pridige v Gant* [1985] R.T.R. 196). A medical or other emergency which compels a motorist to drive is capable of amounting to "special reasons" for not disqualifying, but the test is objective as to whether such an emergency in fact existed (*Thompson v Diamond* [1985] R.T.R. 316). Where a defendant was convicted of driving with excess alcohol on the evidence of one specimen, and was also convicted of failing to provide a second specimen, the circumstances did not constitute "special reasons" for failing to disqualify or indorse on the second offence (*Denneny v Harding* [1986] R.T.R. 350). Conflict between the blood/alcohol level figures provided by blood and breath specimens could amount to a "special reason" for not disqualifying (*Smith v Geraghty* [1986] R.T.R. 222). The fact that a motorist drives only a very short distance is capable of being a "special reason" for not disqualifying him from driving under this section. Thus, where a drinking passenger drove a car back on to the road and parked it, after the original driver had crashed it into a field, there was a "special reason" (*Chatters v Burke* [1986] 1 W.L.R. 1321). And, where the drinking husband backed the car out of a parking space preparatory to the wife driving them home, there was also a special reason for not disqualifying (*Redmond v Parry* [1986] R.T.R. 146). Ignorance of the overnight effect of alcohol consumed 12 hours before driving did not constitute a "special reason" for not disqualifying (*DPP v O'Meara* [1989] R.T.R. 24). Justices were held to have erred in finding "special reasons" for not disqualifying a driver who had an accident on his way home after attending an emergency situation as the emergency could have been met by means other than driving (*DPP v Waller* [1989] R.T.R. 112). A motorist who pleads, as a "special reason" under this section, that his drink has been laced has to satisfy the justices, first, that the drink has been laced and, secondly, that the excess alcohol was attributable to that which had been added without his knowledge (*James v Morgan* [1988] R.T.R. 85). Fear by a motorist for the safety of his wife if he did not drive to escape the threatening behaviour of her former husband could be a "special reason" for not disqualifying him (*Williams v Tierney* [1988] R.T.R. 118). Where the first of two breath tests produced a negative result that was not a "special reason" for not disqualifying when a second test proved positive (*DPP v White* [1988] R.T.R. 267). Dealing with an emergency can be a "special reason" for the purposes of s.93 but only for the period of the emergency. It no longer protected a driver on his way home after he had dealt with the emergency (*DPP v Feeney* (1989) 89 Cr.App.R. 173, D.C.). Ignorance of the accused as to what she was doing, through the influence of a laced drink given her by a friend, could be a special reason for non-disqualification (*DPP v Barker* [1990] R.T.R. 1). The fact that a drunken driver had only driven 40 yards in order to be able to park his car safely, and that there was no danger to any member of

the public, was held to be a "special reason" for non-disqualification (*DPP v Corcoran* [1991] R.T.R. 329). The fact that the defendant had not had a "reasonable excuse" for not providing a specimen under s.8(7), as substituted, did not necessarily mean that there would also not be special reasons for not disqualifying under s.93 (*Daniels v DPP*, *The Times*, 25 November 1991). If a motorist relies on the fact that his drink was laced as a special reason under this section then he has to show that his drink was in fact laced, that he did not know that it was laced and that he would not otherwise have exceeded the prescribed limit (*DPP v Connor*; *Same v Allat*; *Same v Connor*; *Same v Chapman*; *R. v Chichester Crown Court, Ex p. Moss*; *Moss v Allen* [1992] R.T.R. 66). A genuine fear of contracting AIDS as a result of blowing into a police breath test device was capable of amounting to a special reason for not disqualifying a driver who had refused to provide a specimen of breath (*DPP v Kinnersley*, *The Times*, 29 December 1992). Fear for her own personal safety and the possibility of further damage to her car did not amount to a special reason for non-disqualification in circumstances where the motorist had deliberately taken a decision to drink when she knew she would be driving (*DPP v Doyle* [1993] R.T.R. 369).

The circumstances which led justices to decide not to disqualify a motorist, even after accepting his plea of guilty to a charge of failing to provide a specimen of breath, could provide a "special reason", within the meaning of s.101(2) of the Road Traffic Act 1972 (c.20) (now Road Traffic Offenders Act 1988 (c.53) s.44), for not ordering the obligatory number of penalty points to be indorsed on his licence (*McCormick v Hitchins* (1986) 83 Cr.App.R. 11). The fact that consecutive offences of permitting uninsured use of a vehicle might have been avoided had the defendant been aware of the first constituted a "special reason" for not indorsing his licence for the subsequent offences (*Barnett v Fieldhouse* [1987] R.T.R. 266). Ignorance of the terms of an insurance policy cannot be a "special reason" for the purposes of this section (*East v Bladeri* [1987] R.T.R. 291). But justices were held to be entitled to find that there were "special reasons" not to indorse the licences of motorists who performed U-turns across the central reservation of a motorway in circumstances where their lane was blocked and there had been no on-coming traffic in the opposite carriage-way for a considerable time (*DPP v Fruer* [1989] R.T.R. 29). A solicitor speeding on the motorway in answer to an urgent call by his clerk did not have "special reasons" to avoid indorsement of his licence (*Robinson v DPP* [1989] R.T.R. 42). Participation by a police officer on duty in a police training exercise which required him to try to keep another police car under a surveillance was not a "special reason" for non-endorsement of licence under s.101(2) (*Agnew v DPP* [1991] R.T.R. 144). Where the accused rode his child's mechanically propelled motorcycle along a road and struck a car, and pleaded guilty to a charge of careless driving, the fact that he regarded the cycle as a toy was not a "special reason" for not endorsing his licence (*DPP v Powell* [1993] R.T.R. 236).

Driving friends who had been injured in a disturbance to hospital, having been informed that there were no ambulances available and that a taxi would not convey them amounted to "special reasons" for non-disqualification (*DPP v Upchurch* [1994] R.T.R. 366). Driving home to relieve a 14-year-old babysitter who had received a number of telephone calls in which the caller had threatened to use a knife, having failed to find alternative means of transport home, amounted to "special reason" for non-disqualification (*DPP v Knight* [1994] R.T.R. 374).

Circumstances which did not amount to a reasonable excuse for failing to provide a specimen of breath for analysis could afford a "special reason" under s.34 but the court had to be in a position to accept the factual basis although finding that the factual basis did not amount to a reasonable excuse (*DPP v Daley* (No.2) R.T.R. 107).

"Some other special reason" (Arbitration Act 1979 (c.42) s.1(7)(b)). A change in the law, as opposed to a discovery of new facts, subsequent to the hearing of an action, could constitute a "special reason" for a decision of the High Court to be considered by the Court of Appeal under this section (*Arnold v National Westminster Bank* [1988] 3 All E.R. 977).

"Some special reason why such a notice was not given" (Arbitration Act 1979 (c.42) s.1(6)(b)). At a rent review, a failure by the tenant's surveyor to recognise a challenge by the landlord to the basis on which the revised rent had been assessed at an earlier rent review was not a "special reason" for the tenant's failure to give notice to the arbitrator that a reasoned award was required (*Leeds Permanent Building Society v Latchmere Properties* [1989] 20 E.G. 128).

(Housing Act 1985 (c.68) s.59.) "Other special reason" should not be construed using the *eiusdem generis* rule. The word "special" pointed to the fact that the circumstances of the applicant had to be particularly serious and different from other homeless persons and the financial impecuniosity of an asylum seeker, while not a special reason on its own, should be considered together with the absence of family or friends in the United Kingdom and an inability to speak English (*R. v Kensington and Chelsea RLBC Ex p. Kihara, The Independent*, July 3, 1996).

Special reasons for the appointment of the Official Solicitor as a guardian ad litem on an application for an adoption order: see *Re D. X. (An infant)* [1948] W.N. 377.

"Special reasons" (Rent Act 1965 (c.75) s.33(6)). The fact that the owner of the property made no claim for mesne profits, for the period from the date of the notice to quit to the date of the possession order, was a "special reason" for making an order for costs under this section (*Wilson v Croft* [1971] 1 Q.B. 241).

"Special reasons" (Public Bodies (Admission to Meetings) Act 1960 (c.67) s.1(2)). Lack of accommodation was held to be an adequate "special reason" for excluding the public from a meeting of a local authority committee (*R. v Liverpool City Council, Ex p. Liverpool Taxi Operators* [1975] 1 W.L.R. 701).

"Special reason" (Arbitration Act 1979 (c.42) s.1(6)(b)). A bona fide misunderstanding between a solicitor acting for one of the parties in an arbitration and an officer involved in the proceedings, as a result of which the solicitor mistakenly believed that a request for a reasoned award had been made in time, could constitute a "special reason" why notice had not been given in time under s.1(6)(a) (*Hayn Roman & Co SA v Cominter (UK)* [1981] Com. L.R. 239).

Where a High Court judge reached a different decision from that of arbitrators he considered very experienced, that did not constitute a "special reason" for granting leave to appeal under s.1(7)(b) of the Arbitration Act 1979 (c.42) (*Pera Shipping Corp v Petroschip SA (The Pera)* [1985] 2 Lloyd's Rep. 103).

"First, as is apparent from the choice of words used by the Community legislature in the first sentence of Article 98(1) of the Regulation (see, *inter alia*, in Spanish 'razones especiales'; in German, 'besondere Gründe'; in English, 'special reasons'; in French 'raisons particulières'; in Italian, 'motivi particolari'; and, in Dutch, 'speciale redenen'), the term 'special reasons' relates to factual circumstances specific to a given case. The fact that the legislation of a Member State provides for a general

prohibition of infringement and for the possibility of penalising further infringement or threatened infringement cannot be regarded as specific to every action for infringement or threatened infringement brought before the Community trade mark courts of that state.” (*Nokia Corporation v Wardell* (Case C-316/05) ECJ at [37]–[38].)

SPECIAL REQUIREMENTS. (Licensing Act 1921 (11 & 12 Geo. 5, c.42) s.1(1)(b)). As to the discretion of justices in extending permitted hours in order to suit local conditions, see *R. v Licensing Justices for Wisbech* [1937] 2 K.B. 706.

SPECIAL RESERVE. See MILITIA.

SPECIAL RESOLUTION. See RESOLUTION.

SPECIAL RESOLUTION REGIME (for banks). Stat. Def., Banking Act 2009 s.1.

SPECIAL RISK. (Police Pensions Act 1921 (c.31) s.33(3).) The risk had to be special to the duty which the police officer was called upon to perform, and not a risk which was special to the officer, e.g. heart disease (*Gordon v Barnsley Policy Authority* [1948] 2 All E.R. 79).

Unsafe hardboard roofing is not a “special risk ordinarily incident” to the work of a post office engineer, engaged in removing cable from a factory within the meaning of s.2(3)(b) of the Occupiers’ Liability Act 1957 (c.31) (*Woollins v British Celanese* (1966) 1 K.I.R. 438).

SPECIAL SCHOOL. Stat. Def., Education Act 1996 s.337 amended by Education and Skills Act 2008 s.142.

SPECIAL SERVICES. Special services by a railway company: see *Lancashire & Yorkshire Railway v Gidlow*, L.R. 7 H.L. 517, cited “Services Incidental”, under INCIDENT.

“Special services” for salvage: see *The Queen Elizabeth*, 88 Ll. L. Rep. 803.

SPECIAL SESSION. A special sessions of justices was a special petty sessions called for some particular purpose: see hereon High Constables Act 1869 (c.47) s.3; County Rates Act 1844 (c.33) s.7. Where there was no statutory provision the clerk gave a reasonable convening notice (*R. v Worcestershire Justices*, 2 B. & Ald. 228). Special sessions for transferring alehouse licences, see Alehouse Act 1828 (c.61) ss.4, 5; for revising jury lists, see Juries Act 1825 (c.50) s.10; for hearing poor rate appeals, see Parochial Assessments Act 1836 (c.96) s.6, on which see Stone, tit., *Poor Rates*.

SPECIAL SUITABILITY. “Special suitability” (Acquisition of Land (Assessment of Compensation) Act 1919 (c.57) s.2). On the question of the basis for assessing compensation the expression “special suitability . . . for any purpose” referred to the quality of the land, as opposed to the needs of a particular purchaser (*Lambe v Secretary of State for War* [1955] 2 Q.B. 612).

SPECIAL TAIL. See TAIL.

SPECIAL TRAIN. A special train is not necessarily one ordered by a passenger or a body of passengers; but includes a train specially provided by a railway company in substitution for, or in addition to, their ordinary service (*Walker v London & South Western Railway* *The Times*, May 18, 1882): see also ORDINARY TRAIN; TRAIN.

SPECIAL TRUST. See SIMPLE TRUST.

SPECIAL VERDICT. See VERDICT.

SPECIALISED VEHICLE. “Specialised vehicles” (Community Road Transport Rules (Exemptions) Regulations 1978 (SI 1978/1158) reg.4(3)) are vehicles whose construction, fitments and other permanent equipment guaranteed that they were used primarily for one of the operations specified in that regulation, such as door-to-door

selling. The mere fact of being used for a specified operation did not of itself make the vehicle “specialised” within the meaning of this regulation (*Gaunt v Nelson* [1978] R.T.R. 1).

“Specialised breakdown vehicle” (EEC Regulation 543/69 art.4(9)). The exemption from the tachograph regulations in respect of specialised breakdown vehicles was conditional only on the nature of the vehicle concerned regardless of the use to which it was put. In this case the transport of old unroadworthy cars (*Hamilton v Whitelock* [1988] R.T.R. 23).

See also BREAKDOWN VEHICLE; RECOVERY VEHICLE.

SPECIALIST. See *Att-Gen v Churchill's Veterinary Sanatorium Ltd* [1910] 2 Ch. 401. See also QUALIFIED.

SPECIALIST PRINTING EQUIPMENT. Stat. Def., Specialist Printing Equipment and Materials (Offences) Act 2015 s.2.

SPECIALLY. “Specially authorised societies” (Friendly Societies Act 1875 (c.60) s.8(5)); see *Peat v Fowler*, 55 L.J.Q.B. 271; FRIENDLY SOCIETY.

“Specially equipped with salvage plant” (Merchant Shipping (Salvage) Act 1916 (c.41) s.1); see *The Morgana* [1920] P. 442.

“Specially liable” (Factories Act 1937 (c.67) s.25(2); Factories Act 1961 (c.34) s.28(2)) means more than usually liable (*Harris v Rugby Portland Cement Co* [1955] 1 W.L.R. 648).

“Specially limited”: see *Morris v Duncan* [1899] 1 Q.B. 4, cited RECOVER.

“Specially qualified medical board” (Silicosis and Asbestosis (Medical Arrangements) Scheme 1931 art.5) meant specially qualified in relation to the disease in question (*Williams v Tredegar Iron & Coal Co* [1948] 1 All E.R. 236). See also QUALIFIED; EXPERT; SKILL.

SPECIALTY. “Specialty” (Limitation Act 1980 (c.58) s.8). An action to enforce a tenant’s right of franchise under the Leasehold Reform Act 1967 (c.88) was an action on a “specialty” within the meaning of this section (*Collin v Duke of Westminster* [1985] 2 W.L.R. 553).

(Limitation Act 1980 (c.58) s.8(1).) An action for damages for breach of a contract under seal (a “specialty”) was governed by s.8(1) of the 1980 Act and so subject to a 12-year limitation period (*Aiken v Stewart Wrightson Members Agency Ltd* [1995] 1 W.L.R. 1281).

Note that *Collin v Duke of Westminster* was applied in *Rahman v Sterling Credit Ltd* [2001] 1 W.L.R. 496, CA.

For a document under seal in Trinidad and Tobago to constitute a specialty within the meaning of s.3 of the Limitation of Personal Actions Ordinance (Laws of Trinidad and Tobago, 1950 edn, c.5, No.6) it must be signed and delivered as a deed and executed in the presence of and attested by at least one witness in acceptance with the Registration of Deeds Ordinance (Laws of Trinidad and Tobago, 1950 edn, C.28, No.2) (*Matadeen v Caribbean Insurance Co Ltd* [2003] 1 W.L.R. 670, PC).

A claim under the Consumer Credit Act 1974 s.139 to reopen a credit agreement on grounds of extortion is an action on a specialty for the purposes of the Limitation Act 1980 (*Nolan v Wright* [2009] EWHC 305 (Ch)).

Cp. PAROL; SIMPLE CONTRACT.

SPECIE. In a marine insurance where goods are insured against total loss free of average, “it is well settled that if the goods insured arrive at the port of destination existing ‘in specie’, the underwriters are not liable although the goods are of no value

SPECIES

whatever. Some question has arisen as to the meaning of 'specie'. The primitive meaning of the word is undoubtedly 'appearance'; and it is in this sense that it is commonly applied to memorandum articles. Thus, if a box of a chariot is lost and nothing but the wheels remain, these cannot be said to have the appearance of a chariot, and consequently the article no longer exists 'in specie', and the underwriters are liable as for a total loss with salvage (*Judah v Randal*, 2 Caines Ca. 324). But it has been held that the value of the article has nothing to do with its existence 'in specie'. Thus, fish though absolutely spoiled (*Cocking v Fraser Park*, 247), and corn which was putrid (*Neilson v Columbian Insurance*, 3 Caines Rep. 108), were both held to exist 'in specie'. And pork has been held not to lose its identity by being roasted (*Skinner v Western Marine Insurance*, 19 La. 273)" (Parsons Maritime Law, 381, cited by Mellish arg., *Duthie v Hilton*, L.R. 4 C.P. 141; see also *Cambridge v Anderton*, 2 B. & C. 691; *Saunders v Baring*, 34 L.T. 419; *The Knight of St. Michael*, 14 T.L.R. 191).

But the test applicable to such cases as those just referred "is, whether as a matter of business, the nature of the thing has been altered. The nature of a thing is not necessarily altered because the thing itself has been damaged; wheat or rice may be damaged, but may still remain the things dealt with as wheat or rice in business. But if the nature of the thing is altered and it becomes, for business purposes, something else so that it is not dealt with by business people as the thing which it originally was—if it is so changed in its nature by the perils of the sea as to become an unmerchantable thing which no buyer and no honest seller would sell—then there is a total loss" (per Esher M.R., *Asfar v Blundell* [1896] 1 Q.B. 127).

As to what words will entitle a tenant for life to enjoy wasting or onerous assets "in specie", so as to displace the rule in *Howe v Dartmouth* (7 Ves. 137; 1 White & Tudor (9th edn) 60, 68), see POSTPONE; PRODUCE; PROFITS; RENTS; see also *Collins v Collins*, 2 My. & K. 703; *Pickering v Pickering*, 8 L.J. Ch. 336; *Holgate v Jennings*, 24 Bea. 623; *Fearn v Young*, 9 Ves. 549, and *Kirkman v Booth*, 18 L.J. Ch. 25, cited and stated by Buckley J., *Stanier v Hodgkinson*, 73 L.J. Ch. 179; see also 2 Jarm. (8th edn), 1225 et seq.; Law of Property Act 1925 (c.20) s.28; *Re Brooker* [1926] W.N. 93.

SPECIES. "Species of dog" in s.2(2)(b) of the Animals Act 1971 (c.22) means "breed", not dogs generally.

The presence of the word "includes" in s.11 of the Animals Act 1971 (c.22) (the interpretation section) allowed "sub-species" to be substituted for "species" (*Hunt v Wallis*, [1994] P.I.Q.R. P128).

Stat. Def., Animal Health Act 1981 (c.22) s.21.

SPECIFIC. "Specific . . . benefits" (Restrictive Trade Practices Act 1956 (c.68) s.21(1)(b)) means explicit and definable (*Re Net Book Agreement 1957* [1962] 1 W.L.R. 1347).

"Specific cause" of profits falling short (Income Tax Act 1842 (c.35) s.100 Sch.D 3rd set of rules r.4): see *Ryhope Co v Foyer*, 7 Q.B.D. 485.

Income Tax Act 1918 (c.40) Sch.D Rules applicable to Cases I and II, r.11: in relation to a reduction of profits, included the cessation of a coal strike (*Inland Revenue Commissioners v Anderson* [1931] 48 T.L.R. 126); but not ordinary fluctuations of trade (*Fiat (England) v Williams*, 17 Tax Cas. 105). See also *Elliott v Duchess Mills Ltd* [1927] 1 K.B. 182.

"Specific charge": see *Illingworth v Houldsworth* [1904] A.C. 355, cited FLOATING SECURITY.

A specific bequest, “in the first place, is a part of the testator’s property. A general bequest may or may not be a part of the testator’s property. A man who gives 100 money or 100 stock may not have either the money or the stock, in which case his executors must raise the money or buy the stock; or he may have money or stock sufficient to discharge the legacy, in which case the executors would probably discharge it out of the actual money or stock. But in the case of a general legacy it has no reference to the actual state of the testator’s property, it being only supposed that the testator has sufficient property which, on being realised, will procure for the legatee that which is given to him; while in the case of a specific bequest it must be of a part of the testator’s property itself. In the next place, it must be a part emphatically, as distinguished from the whole. It must be what has been sometimes called, a severed or distinguished part. It must not be the whole, in the meaning of being the totality of the testator’s property, or the totality of the general residue of his property after having given legacies out of it. But if it satisfy both conditions—that it is (1) a part of the testator’s property itself, and (2) is a part as distinguished from the whole or from the whole of the residue—then it appears to me to satisfy everything that is required to treat it as a specific legacy. I hope the definition which I have attempted to give will be more successful than those which have been attempted before, but I can only express that hope with some degree of trepidation” (per Jessel M.R., *Bothamley v Sherson*, L.R. 20 Eq. 308, 309). But a residuary devise is specific in its nature, as regards marshalling assets (*Hensman v Fryer*, 3 Ch. 420), and within LOCKE KING’S ACTS (Real Estate Charges Acts 1854 (c.113), 1867 (c.69) and 1877 (c.34)) (*Gibbins v Eyden*, L.R. 7 Eq. 371; *Hannington v True*, 33 Ch. D. 197). See also *Page v Leapingwell*, 18 Ves. 43, on which see *Harley v Moon*, 31 L.J. Ch. 140; *Re Margetts*, 50 S.J. 290; MY. Cp. SEVERANCE.

“Specific goods” (Sale of Goods Act 1893 (c.71) s.62(1)) means “goods identified and agreed upon at the time a contract of sale is made”. As to haystacks, see *Eldon (Lord) v Hedley Brothers* [1935] 2 K.B. 1. See also *Re Wait*, 96 L.J. Ch. 179; *Kursell v Timber Operators & Contractors Ltd* [1927] 1 K.B. 298.

“Specific legacy”: see per Selborne C., *Robertson v Broadbent*, 8 App. Cas. 812; *Re Huddleston* [1894] 3 Ch. 595; *Re Richardson*, 86 L.T. 25; INVESTED; SUM; 2 Wms. (13th edn) 609 et seq.; Theobald (10th edn), 113–119. As to general or specific legacy, see *Re Willcocks* [1921] 2 Ch. 327; *Hawkind v Shaw* [1922] 2 Ch. 569.

“Specific performance of a contract is its actual execution according to its stipulations and terms; and is contrasted with damages or compensation for the non-execution of the contract” (Fry (6th edn) s.3). See also Fry, passim; 2 White & Tudor (9th edn), 372 et seq.

Specific performance of a building contract will be ordered where damages are not an adequate remedy, the works are sufficiently defined, and the defendant owns or otherwise has the right to enter on the land on which the work is to be done (*Carpenters Estates Ltd v Davies* [1940] Ch. 160).

As to the making of an order for specific performance in the county court, see *Bourne v McDonald* [1950] 2 K.B. 422.

“Specific purpose”: see *Tek v Hoor Neoh* [1922] 1 A.C. 120.

A resolution passed by an association of motor-vehicle finance houses, that members should not supply vehicles save on or subject to terms and conditions providing for an indemnity from the dealer, was a “specific” recommendation within s.6(7) of the Restrictive Trade Practices Act 1956 (c.68) (*Re Finance Houses*

SPECIFIC

Association's Agreement [1965] 1 W.L.R. 1419), as also was a recommendation by National Federation of Retail Newsagents to its members that they should impose a boycott on the Daily Mirror (*Re National Federation of Retail Newsagents, etc. Agreement (No.3)* [1969] 1 W.L.R. 875).

A "specific sum", charged by settlement on realty and exempt from legacy duty by the proviso to Legacy Duty Act 1805 (c.28) s.4, was not confined to a precise amount fixed by the settlement, but included an amount named by the settlement which might be reduced by the donee of a power thereunder, e.g. a power to appoint a rent-charge not exceeding £700 a year (*Att-Gen v Hertford*, 14 L.J. Ex. 266; *Pickard v Att-Gen*, 9 L.J. Ex. 329).

"The qualifier 'specific' in three language versions [of Directive 94/62] does not really appear to add anything to the word 'goods'" (*Plato Plastik v Caropack* [2004] 3 C.M.L.R. 661, ECJ (para.65)).

"Specific trust": see PARTICULAR TRUST.

"Specific wish": see *Re Atkinson*, 80 L.J. Ch. 370, cited PRECATORY TRUST.

"Specifics", i.e. medicines: see *Farmer v Glyn-Jones* [1903] 2 K.B. 6, cited PROPRIETOR.

See SPECIFY.

SPECIFIC CHARGE. Whether a charge is fixed or floating depends not on how it is described in the agreement creating it but on all the circumstances (*Re Spectrum Plus Ltd (In Liquidation)* [2004] 3 All E.R. 503, CA).

SPECIFIC ISSUE ORDER. (Children Act 1989 (c.41) s.8.) An application for a specific issue order could not be made to determine rights of occupation in a property (*Pearson v Franklin* [1994] 2 All E.R. 137).

SPECIFICALLY. A mortgage or charge "specifically affecting" the property of a joint stock company (Companies Act 1862 (c.89) s.43; see Companies Act 1948 (c.38) s.104) means one created by the company itself (*Re General Horticultural Co*, 29 S.J. 555).

"Specifically bequeathed": see BEQUEATHED; and SPECIFIC, para.(4).

The statute establishing poor rates (Poor Relief Act 1601 (c.2)) imposed no liability on any mines, except coal mines (*Morgan v Crawshaw*, L.R. 5 H.L. 304). The Rating Act 1874 (c.54) s.3 made all mines assessable to the poor rate; but, by s.8, a lessee, till then exempt from being rated, became during the continuance of his lease entitled to deduct from his rent one-half of the rate unless he had "specifically contracted to pay such rate in the event of the abolition of the said exemption". A lessee of an iron mine who became liable to poor rate under that latter Act, and who before its passing had contracted to pay his rent "free from all deductions whatsoever", and also to pay "all manner of taxes, rates, assessments, charges, and impositions whatsoever, parliamentary or parochial, which now are or shall at any time hereafter" be payable in respect of the mine, was held not to have "specifically" contracted himself out of the benefit of s.8 (*Chaloner v Bolckow*, 3 App. Cas. 933; *Devonshire v Barrow Haematite Steel Co*, 2 Q.B.D. 286; see IMPOSITION). "The meaning of the word 'specific' is the reverse of 'general'. You cannot give to a general covenant the force of a specific agreement with regard to a particular tax; and a covenant in a lease to pay 'all taxes, rates, assessments, charges and impositions whatsoever' cannot be regarded as a 'specific' covenant" (per Lord Hatherley, *Chaloner v Bolckow*, above).

To deny “specifically” a statement in a pleading (R.S.C. Ord.19 r.13, now Ord.18 r.13(3)). See thereon *Thorp v Holdsworth*, 3 Ch. D. 637; *Harris v Gamble*, 7 Ch. D. 877; *Adkins v North Metropolitan Tramways*, 63 L.J.Q.B. 361; Ann. Pr.; cp. NEGATIVE PREGNANT.

The words “household furniture and effects, implements of husbandry”, in a schedule to a bill of sale, do not “specifically” describe such goods within Bills of Sale Act 1882 (c.43) s.4; for the word requires “that amount of separation of one class of articles from another which any business inventory would give” (per Brett M.R., *Roberts v Roberts*, 13 Q.B.D. 794). So, a bill of sale, by a picture dealer, stating pictures as being so many—e.g. 300 oil pictures in gilt frames, 20 water-colour pictures—would be insufficient (*Witt v Banner*, 20 Q.B.D. 114). But in a bill of sale by a private person, “12 oil paintings in gilt frames” was held sufficiently specific (*Cooper v Huggins*, 34 S.J. 96). Ordinary cows are not specifically described as “21 milch cows” if nothing more be added (*Carpenter v Deen*, 23 Q.B.D. 566); but in that case Lopes L.J. (who dissented from the decision), said that sheep should be more definitely described, and that horses are customarily described by their colour, e.g. “bay mare”, “chestnut gelding”. *Carpenter v Deen* was followed in *Davies v Jenkins* [1900] 1 Q.B. 133. In the case of a small farm in Wales, a description of “all my farming stock, comprising four horses, five cows”, and mentioning other animals by number only and defining them in no other way, was held sufficient (*Jones v Roberts*, 34 S.J. 254); in this case the identification was aided by the localising words “all my farming stock” (see hereon per Cotton L.J., *Carpenter v Deen*, above). So, by the words “roan horse, Drummer; brown mare and foal; three rade carts”, the chattels were “specifically described” (*Hickley v Greenwood*, 25 Q.B.D. 277). So, where a bill of sale, under the heading “study”, had an item of “1800 volumes of books, as per catalogue”, which catalogue was not annexed, it was held that the books were “specifically described” within the section (*Davidson v Carlton Bank* [1893] 1 Q.B. 82). See also *Seed v Bradley* [1894] 1 Q.B. 319, cited “Maintenance of the Security”, under MAINTENANCE.

“Specifically devised”: see *Giles v Melsom*, L.R. 6 H.L. 24.

Deck cargo and living animals must be insured specifically: see Rules of Construction r.17; Marine Insurance Act 1906 (c.41) Sch.I. Specifically in that clause means “as such”: see *British & Foreign Marine Insurance Co v Gaunt* [1921] 2 A.C. 41.

SPECIFICATION. The specification to accompany an application for the grant of a patent might be either (1) provisional, or (2) complete (Patents, Designs and Trade Marks Act 1883 (c.57) s.5); Form B in Sch.1 to that Act was that of a provisional specification; Form C that of a complete specification. See hereon per Halsbury C., *Vickers v Siddell*, 15 App. Cas. 496; *Nuttall v Hargreaves* [1892] 1 Ch. 23. Cp. Patents Act 1949 (c.87) ss.3, 4.

See QUANTITY SURVEYOR.

SPECIFICITY PRINCIPAL. A grant from the European Social Fund which was utilised by a public body for purposes which had nothing to do with projects earmarked for the grant but which had already been funded by the body’s own domestic arrangements did not breach the “specificity principle” contained in the EC regulations governing the administration of the European Social Fund (*Birmingham City Council v Birmingham College of Food and Sutton Coldfield College*; *Cheshire CC v Halton College* [1996] E.L.R. 1).

SPECIFIED

See also ADDITIONALITY PRINCIPLE.

SPECIFIED. The partial construction of a soakaway and three trenches, and the construction of a short section of the drive were held to constitute “specified operations” within the meaning of the Town and Country Planning Act 1971 (c.78) s.43 (*Spackman v Secretary of State for the Environment* [1977] 1 All E.R. 257).

“Specified period of the year” (Agricultural Holdings Act 1948 (c.63) s.2(1)) includes a period of 364 days (*Reid v Dawson* [1955] 1 Q.B. 214).

“Specified person”, in definition of PROMISSORY NOTE: see *Storm v. Stirling*, 23 L.J.Q.B. 298, cited SECRETARY.

(Essential Work (Building and Civil Engineering) Order 1942.) In order to specify a person it is not necessary to give his name provided he is unambiguously identified. A class of persons may be identified by some common characteristic. It is not necessary to name their type of work (*McMorran v Morrison (Contractors)* [1944] 2 All E.R. 448).

To suspend an order until a bankrupt has paid 15s. in the is to suspend it for an indeterminate time, not for a “specified time” within the meaning of Bankruptcy Act 1914 (c.59) s.26(2) (see *Re Kitner* [1921] 3 K.B. 93).

“Specified trade”: see *Skinner v Breach* [1927] 2 K.B. 220.

A period is sufficiently specified for the purposes of s.1(1) of the Perpetuities and Accumulations Act 1964 (c.55) if it is made unambiguously clear what that period is to be; so that where a will specified a period not expressed as a number of years, but which could become a number of years by calculation it was held that the period had been sufficiently “specified” for the purposes of this section (*Re Green’s Will Trusts* [1985] 3 All E.R. 455).

Where a landowner granted a licence for an indefinite period in contemplation that the land would be used for grazing, that was held to have created a seasonal grazing licence “during some specified period of the year” within the meaning of s.2(1) of the Agricultural Holdings Act 1948 (c.63) (*Watts v Yeend* [1987] 1 W.L.R. 323).

(Taxes Management Act 1970 (c.9) s.20.) The words “specified or described” in s.20(8D) should be given their ordinary and natural meaning and not a more restricted interpretation (*R. v Inland Revenue Commissioners, Ex p. Ulster Bank Ltd* [1997] S.T.C. 832).

An enabling power in statute often permits the exercising instrument to make provision by reference to “specified” matters, meaning matters to be specified in the instrument itself. This can sometimes give rise to confusion, as, for example, in the following exchange recorded in Appendix I to the Seventh Report for Session 1997–98 of the Joint Committee on Statutory Instruments (HL Paper 16; HC 33-vii): “Memorandum by the Ministry of Agriculture, Fisheries and Food—AGRICULTURE ACT 1986 (AMENDMENT) REGULATIONS 1997 (S.I. 1997/1457) 1. The Committee requested a memorandum on the following point: ‘As respects paragraph (b) of the new subsection (4A) inserted in s.18 of the Act, explain whether the circumstances in which the Minister is empowered to withhold aid will be specified in the agreement itself or may be specified outside the agreement. If the latter, how will the other party to the agreement be made aware of the circumstances in which the Minister may withhold payment?’ 2. Subsection (4A), so far as is relevant, reads as follows: ‘. . . an agreement under subsection (3) may contain . . . (b) provision for payments by the Minister to be withheld in specified circumstances’. 3. The subsection was drafted on the basis that the circumstances in which payments might be withheld

would be required to be specified in the agreement, as implied by the introductory words 'an agreement may contain'. The draftsman preferred the use of 'specified circumstances' over the longer 'circumstances specified in the agreement', which would also have been apt. 4. Accordingly, the answer to the question whether the circumstances may be specified outside the agreement is 'no', and the remainder of the Committee's query is therefore inapplicable. 5. As subsection (4A) was drafted in Parliamentary Counsel's office, this response has been agreed with them. 7th July 1997".

"Specified in the order": see PARTICULAR.

See SET FORTH.

SPECIFIED OPERATION. (Town and Country Planning Act 1971 (c.78) s.43.) The question whether work carried out on a site for which planning permission had been granted for a limited time constituted a "specified operation" within the meaning of s.43(2) was one of purpose and not degree (*Thayer v Secretary of State for the Environment* [1991] 3 P.L.R. 104). See also *R. v Elmbridge BC, Ex p. Oakimber* [1991] 3 P.L.R. 35.

SPECIFIED PERSON. (Employment Act 1990 (c.38) s.7(3)(b).) The requirement under this section that a call for industrial action be made by a "specified person" (in this case the union's general secretary) was met where the general secretary gave a regional union official authorisation to strike should the negotiations with the employers, set for the following day, break down (*Tanks and Drums v Transport and General Workers Union* [1991] I.R.L.R. 372).

SPECIFIED PROCEEDINGS. (Children Act 1989 (c.41) ss.37, 41; Family Proceedings Rules 1991 (SI 1991/1247) rr.4.10–4.11, 9.2A, 9.5.) Proceedings ceased to be "specified proceedings" once a local authority had decided not to apply for a public law order after completion of an investigation under s.37(1) (*Re CE (Section 37 direction)* [1995] 1 F.L.R. 26).

SPECIFY. A marine policy issued by an association and signed by A. B., manager, "per procuration of the several members of the association every member bearing his equal proportion according to the sums mutually insured therein", and which did not by itself afford the means of ascertaining who the insurers were to be, did not "specify" the names of the subscribers or underwriters within the meaning of Customs and Inland Revenue Act 1867 (c.23) s.7 (*Re Arthur Average Association*, 10 Ch. 542; see thereon *Smith v Anderson*, 15 Ch. D. 247). See Stamp Act 1891 (c.39) s.93. But as regards the Stamps Act 1795 (c.63) s.2, the language of which was employed in Customs and Inland Revenue Act 1867 (c.23) s.7, it was held that if the insurers constituted a firm, the name of the firm would be a sufficient specification of the subscribers (*Reid v Allan*, 4 Ex. 326; *Dowdall v Allan*, 19 L.J.Q.B. 41; referring to which cases it has been said, "it may easily be held that a partnership name is a sufficient specification" (per James L.J., *Re Arthur Average Association*, 44 L.J. Ch. 576)).

Order by Railway Commissioners requiring a railway or canal company to "specify the nature and detail of such other expenses" (Regulation of Railways Act 1873 (c.48) s.14) see NATURE.

"Notice specifying particular breach" (Conveyancing Act 1881 (c.41) s.14—see Law of Property Act 1925 (c.20) s.146(i)): see NOTICE.

"Specifies the acts or omissions" (Truck Act 1896 (c.44) s.1(1)(b)): see *Squire v Bayer* [1901] 2 K.B. 299, cited GOOD ORDER.

SPECIMEN

Where a company agreed to sell its undertaking and a part of the bargain was that the directors and secretary should receive from the purchaser compensation for loss of office, and the notice to shareholders of a meeting to sanction the agreement referred to the agreement simply as “an agreement for the sale of the undertaking and assets”, the notice did not sufficiently “specify the purpose for which the meeting is called” (Companies Clauses Consolidation Act 1845 (c.16) s.71), even though it was followed by a circular which stated that “the directors and secretary have agreed to retire on being paid a lump sum as compensation for their loss of office” (*Kaye v Croydon Tramways Co* [1898] 1 Ch. 358).

The notice “specifying the intention to propose” a special resolution, under Companies Act 1862 (c.89) s.51—see Companies Act 1948 (c.38) s.141—(*Re Teede & Bishop*, 70 L.J. Ch. 409; *MacConnell v Prill*, [1916] 2 Ch. 57; *Torbock v Westbury* [1902] 2 Ch. 871, distinguishing *Kaye v Croydon Tramways Co*, above), must fairly state the nature and object of the resolution, so that it may be “intelligible to the minds of the class of men to whom the notice is addressed” (per Chitty J., *Henderson v Bank of Australasia*, 45 Ch. D. 330). See hereon *Re Bridport Old Brewery Co*, 2 Ch. 191; *Re Silkstone Fall Co*, 1 Ch. D. 38; *Imperial Bank of China v Bank of Hindustan*, 6 Eq. 91.

“Specify the grounds”: where the articles of a company authorised the directors to refuse to register a transfer made by a member who had any of certain objectionable qualifications there referred to, and provided that they should not be required to “specify the grounds” of their refusal, “grounds” was held to refer to the qualification on the ground of which the refusal was made, and not merely “reasons” (*Berry and Stewart v Tottenham Hotspur Football and Athletic Co Ltd* [1935] Ch. 718).

“Specifying the grounds of objection”: see *Redheugh v Gateshead* [1924] 1 K.B. 369, reversed [1925] A.C. 309.

“Specify the grounds on which the proposed amendment is supported” (Rating and Valuation Act 1925 (c.90) s.37(2)): see *R. v Winchester Area Assessment Committee*, *Ex p. Wright* [1948] 2 K.B. 455.

“I remain firmly of the view that ‘must specify the grounds’ means more than a recitation that the officer has grounds. Some specificity is required, albeit in relatively summary form.” (*R. (Singh) v Chief Constable of West Midlands Police* [2006] EWCA Civ 1118 per Hallett L.J. at [100].)

See SPECIFIC.

SPECIMEN. “Specimen for a laboratory test” (Road Traffic Act 1972 (c.20) s.9). For a specimen of urine to be a “specimen” within the meaning of this section, it must be of sufficient quantity to be divisible into two parts, and each part must be sufficient to be capable of analysis (*R. v Coward* [1976] R.T.R. 425). See also FAIL.

SPECULATION. “‘Speculation’ is a word of very indefinite meaning. There is legitimate and illegitimate speculation” (per Lord M’Laren, *A. B. v C. D.*, 42 Sc. L.R. 37). See RASH AND HAZARDOUS.

See HEDGING.

SPECULATIVE INVOICING. “Consumer Focus contends, however, that the present claim is a manifestation of a more unsavoury practice called ‘speculative invoicing’, which has attracted considerable media attention in the last couple of years. Consumer Focus describes this as follows. In essence, it involves the sending of letters before action to thousands of internet subscribers whose internet connection is alleged to have been used for small-scale copyright infringement and whose names and addresses have been obtained by means of Norwich Pharmacal orders against their

IPs. Without seeking to confirm whether the internet subscriber was the person responsible for the uploading/downloading of the copyright work that has been detected, the internet subscriber is requested to pay a substantial sum which has no relation to the actual damage caused by the alleged copyright infringement or the costs incurred. Typical sums demanded are in the range £500 to £1000. Invariably, there is a profit-sharing arrangement between the party conducting the litigation and the client, with the former getting the lion's share. The tactic is to scare people into paying the sums by threatening to issue court proceedings. If this does not work, proceedings are not normally issued. This is because the economic model for speculative invoicing means that it is more profitable to collect monies from those who pay rather than incur substantial costs in pursuing those who do not pay in court. Where proceedings are issued, they are not pursued if a default judgment cannot be obtained." (*Golden Eye (International) Ltd v Telefonica UK Ltd* [2012] EWHC 723 (Ch).)

SPEECH. Stat. Def., "includes lecture, address and sermon" (Wireless Telegraphy Act 2006 s.115(1)).

SPEED. See CONVENIENT SPEED; MODERATE SPEED.

See *Smith v Boon*, 84 L.T. 593, cited TRAFFIC. See also REASONABLE AND PROPER; RECKLESS; COURSE.

SPEEDILY. In the context of the requirement to refer a patient's detention to the court in order to satisfy the European Convention on Human Rights, "speedily" cannot be defined in the abstract or by reference to fixed criteria, but requires prompt action judged by reference to all the circumstances (*R. (Rayner) v Secretary of State for Justice* [2008] EWCA Civ 176).

For discussion of the meaning of "speedily" in Article 5(4) of the European Convention on Human Rights see *Faulkner, R. (on the application of) v Secretary of State for Justice* [2013] UKSC 23.

SPEND. "Does not spend": see LEFT.

See EXPEND.

SPENT. As to when an agreement between employers and a workman was "spent", see *Hulmston v Birkenhead Union*, 95 L.J.K.B. 529.

SPENT FUEL. Stat. Def., "means nuclear fuel that has been irradiated in and permanently removed from a reactor core; spent fuel may either be considered as a usable resource that can be reprocessed or be destined for final disposal with no further use foreseen and treated as radioactive waste" (Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 (SI 2008/3087) reg.3).

SPENT MADDER. See *Turner v Mucklow*, 6 L.T. 690.

SPES SUCCESSIONIS. See *Re Parsons*, 45 Ch. D. 51, cited CONTINGENT; EXPECTANT HEIR; *Re Wyllie*, 28 Sc. L.R. 855, and *Morison v Reid*, 30 Sc. L.R. 477, cited PROPERTY; *Re Simpson* [1904] 1 Ch. 1, cited SETTLE; *Re Ellenborough* [1903] 1 Ch. 697; *Obers v Paton's Trustees*, 34 Sc. L.R. 538. A *spes successionis* is only a hope to succeed to property, e.g. as heir-at-law or next-of-kin, it is not a title to property (per Warrington J., *Re Green*, 55 S.J. 552, citing and applying *Re Parsons*, above). See EXPECTANCY.

SPINDLE. "By 'spindle' in this context I mean an object which engages a cylinder by passing through the cylinder from one side to the other side. Thus a spindle supports and drives the cylinder from one side. By 'hub' I mean one of a pair of objects which engage a cylinder from each side. Thus hubs support and drive the cylinder from both sides. Again, it is common ground that this terminology is not

universally accepted in the field. . . . The first is as to the meaning of the term 'spindle'. It is common ground that this is an ordinary English word with no special meaning in this art. According to the Concise Oxford Dictionary it means 'pin or axis which revolves or upon which a thing revolves'. It is also common ground that, in the context of the Error Loading Patent, the word is used by the patentee to describe the object upon which the cylinders of the supply item are mounted. Eagle contends that any shaft on which the supply item can be mounted is a spindle for the purposes of the claim. By contrast DataCard contends that the term is limited to a member which supports the cylinder from one side and passes all the way through the cylinder. The basis for DataCard's contention is that that is what is described and shown in the specific embodiments. DataCard has identified no technical or other reason, however, why the skilled team would think that the claims were limited to the type of spindle disclosed in the specific embodiments. Accordingly, I accept Eagle's construction." (*Datacard Corporation v Eagle Technologies Ltd* [2011] EWHC 244 (Pat).)

SPINSTER. "'Spinster' is the addition usually given to all unmarried women from the viscount's daughter downward" (Cowel).

A bequest for "spinsters" is charitable (*Thompson v Corby*, 27 Bea. 649). But see *Boyce v Wasborough* [1921] 1 A.C. 425. Cp. WIDOW.

Following, and a little amplifying, the rule on the phrase without having been married, Romer J. held that an ultimate trust, in a marriage settlement, on the wife's next-of-kin as if she had died "a spinster and intestate", excluded only the husband, and that her child by a former marriage was entitled (*Re Forbes* [1899] W.N. 6).

See FEME; UNMARRIED.

SPIRIT. "Spirit of the gift" (Charities Act 1960 (c.58) s.13(1)): see *Lepton's Charity* [1972] Ch. 276).

SPIRIT MERCHANT. See MERCHANT.

SPIRITS. "We think that nothing can be taken to be 'spirits' within the meaning of Duties on Spirits Act 1825 (c.80) (see s.101), which does not come under the definition of an inflammable liquid produced by distillation, either pure or mixed only with ingredients which do not convert it into some article of commerce not known in common parlance under the generic appellation of 'spirits'" (per Pollock C.B., delivering the judgment, *Att-Gen v Bailey*, 1 Ex. 281). It was there also said that Duties on Spirits Act 1836 (c.72), and Duties on Spirits Act 1842 (c.25), were strongly confirmatory of this view; and it was held that sweet spirits of nitre were not "spirits" within the enactment.

Stat. Def., Inland Revenue Act 1868 (c.124) s.6; Refreshment Houses Act 1860 (c.27) s.21; Spirits Act 1880 (c.24) s.3; Customs and Excise Act 1952 (c.44) s.307, see also ss.111, 118, 172; Alcoholic Liquor Duties Act 1979 (c.4) s.1(2).

See BRITISH SPIRITS; FOREIGN; LOW WINES; PLAIN SPIRITS; SPIRITUOUS LIQUOR; DEALER; RETAIL; RETAILER. Cp. BEER.

SPIRITUAL. "Temporal or spiritual injury, damage, harm or loss" (Corrupt and Illegal Practices Prevention Act 1883 (c.51) s.2): a priest might "throw the whole weight of his character into the scale; but he may not appeal to the fears, or terrors, or superstition, of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or disadvantage, or of punishment hereafter. He must not, e.g. threaten to excommunicate, or to withhold the Sacraments, or to expose the party to any other religious disability, or denounce the

voting for any particular candidate as a sin, or as an offence involving punishment here or hereafter” (per Fitzgerald J., *Longford*, 2 O’M. & H. 16; see also *Tipperary*, 2 O’M. & H. 31).

“Law spiritual’: that is the ecclesiasticall lawes allowed by the lawes of this realm, namely which are not against the Common Law (whereof the King’s prerogative is a principal part), nor against the statutes and customes of the realm: and regularly, according to such ecclesiasticall lawes, the Ordinarie and other ecclesiasticall judges doe proceed in causes within their conusance” (CO. LITT. 344 A). Cp. “Law temporal”, under TEMPORAL.

“Corporation spiritual”: see CORPORATION.

“Lord spiritual”: see PARLIAMENT; PEER.

See ECCLESIASTICAL PERSON; RELIGION.

SPIRITUALISM. See *Monck v Hilton*, 2 Ex. D. 268, cited PALMISTRY; OTHERWISE.

SPIRITUALITY. “Spiritualities of a bishop, *spiritualia episcopi*, are those profits which he receives as a bishop, not as a baron of the Parliament. Such are the duties of his visitation, his benefit growing from ordaining and instituting priests, prestation money, that is *subsidiū charitativum* which upon reasonable cause he may require of his clergy, and the benefit of his jurisdiction” (Cowel). See also TEMPORALITY.

SPIRITUOUS LIQUOR. “Spirituous liquors” in the first part of Sale of Spirits Act 1751 (Tippling Act) (c.40) s.12 (probably) meant (as it did in the subsequent part of the section) distilled spirituous liquors, so that wine, beer, etc. were not included in the section, but only “spirits” in the popular meaning of that word, e.g. brandy, whisky, gin. see also INTOXICATING LIQUOR; ITEM; ONE TIME.

SPIT. “A ‘spit’ is a spade’s depth.” (*London Borough of Southwark v Transport for London* [2015] EWHC 3448 (Ch).)

SPITTLE-HOUSE. “‘Spittle-house’, mentioned in the Act for Subsidies (15 Car. 2), c.9 is a corruption from hospital, and signifies the same thing; or it may be taken from the Teutonick ‘spital’, which denotes an hospital or almes-house” (Cowel).

SPLIT. Splitting, or dividing, causes of action: see CAUSE OF ACTION.

Conveyances of realty were void when made “to multiply voices, or to split or divide the interest” “among several persons to enable them to vote at elections” (Parliamentary Elections Act 1696 (c.25) s.7); that enactment was “merely declaratory of the common law, and avoids such conveyances only as are actually tainted with fraud” (1 Rogers, 226, which see for cases supporting that proposition).

SPOIL. “Without impeachment of waste, except spoil or destruction”: as to the force of this exception, see per Romilly M.R., *Vincent v Spicer*, 25 L.J. Ch. 591.

See WILFUL AND MALICIOUS. Cp. BOOTY; PRIZE.

SPOILIATION. “Spoliation is an injury done by one clerk or incumbent to another, in taking the fruits of his benefice without any right thereunto, but under a pretended title” (3 B1. Com. 90).

SPOOFING. “The following general description of ‘layering’ or ‘spoofing’ offered by the FCA was accepted by the Upper Tribunal in 7722656 *Canada Inc (t/a Swift Trade) v FSA* [2013] Lloyd’s LR (FC) 381 at paragraph 6 and was not challenged before me:

“‘layering’ consists of the practice of entering relatively large orders on one side of an exchange’s ... electronic order book ... without a genuine intention that the orders will be executed: the orders are placed at prices which are (so the person placing them believes) unlikely to attract counterparties,

SPONTE

while they nevertheless achieve his objective of moving the price of the relevant share as the market adjusts to the fact that there has been an apparent shift in the balance of supply and demand. The movement is then followed by the execution of a trade on the opposite side of the order book which takes advantage of, and profits from, that movement. This trade is in turn followed by a rapid deletion of the large orders which had been entered for the purpose of causing the movement in price, and by repetition of the behaviour in reverse on the other side of the order book. In other words, a person engaged in layering attempts to move the price up in order to benefit from a sale at a high price, then attempts to move it down in order to buy again, but at a lower price, and typically repeats the process several times."

From that description it will be apparent that the term 'layering' refers to the placing of multiple orders that are designed not to trade on one side of the order book, and the term 'spoofing' refers to the fact that the placing of such orders creates a false impression as to the person's true trading intentions." (*The Financial Conduct Authority v Da Vinci Invest Ltd* [2015] EWHC 2401 (Ch).)

SPONTE. See WILLINGLY.

SPORT. Stat. Def., Fire Safety and Safety of Places of Sport Act 1987 (c.27) ss.42, 43.

Stat. Def., Charities Act 2011 s.3.

"Read in context therefore, the word 'sport' as it appears in the 1996 Royal Charter phrase 'sport and physical recreation' connotes and requires an essential element of physical activity. In this connection the decision of the defendant to adopt the European Sport Charter definition of sport which requires an element of physical activity was entirely consistent with the proper understanding of their Royal Charter. Thus, whilst the word 'sport' may have other definitions in other contexts, the correct interpretation of the operative phrase in the 1996 Royal Charter incorporates in this instance an essential element of physical activity." (*English Bridge Union Ltd, R (on the application of) v The English Sports Council* [2015] EWHC 2875 (Admin).)

SPORTING. A "right of sporting" (Rating Act 1874 (c.54) s.6(1)) was a "right of fowling, or of shooting, or of taking or killing game or rabbits, or of fishing", and was rateable under ss.3(2), 6, i.e. "when severed from the occupation of the land", on the full value of the right; it was not assessable to only one-fourth of that value on the ground that it was "land used as arable, meadow, or pasture, ground only", within Public Health Act 1875 (c.55) s.211(1)(b) (*Alton v Spicer* [1904] 1 K.B. 678).

A "sporting paper or periodical", in a restrictive agreement, did not include one devoted to athletic sports and which deliberately excluded all racing and betting intelligence, e.g. the *Athletic News* (*McFarlane v Hulton* [1899] 1 Ch. 88, cited PUBLICATION).

"Sporting purposes" (Firearms Act 1937 (c.12) s.4(7), now Firearms Act 1968 (c.27) s.11(1)). Shooting rats is not shooting for "sporting purposes" within the subsection (*Morton v Chaney; Same v Christopher* [1960] 1 W.L.R. 1312).

"Sporting rights": Stat. Def., Income and Corporation Taxes Act 1970 (c.10) s.75(4).

See HUNTING.

SPORTS. "Sports ground"; "sports stadium": Stat. Def., Safety of Sports Grounds Act 1975 (c.52) s.17.

SPOUSE. "Spouse" in EEC Regulations 1612/68 art.10(1)(a) was held to refer only to a relationship based upon marriage, and could not be extended to cover other types of partner however stable the relationship (*The Netherlands v Ann Florence Reed* (No.59/85) [1987] C.M.L.R. 448).

The Human Rights Act 1998 requires the reference to “the surviving spouse of the late partner” in para.2 of Sch.1 to the Rent Act 1977 as including a reference to a homosexual male partner: *Ghaidan v Mendoza* [2003] 2 W.L.R. 478, CA (confirmed [2004] UKHL 30). This approach supersedes that in *Fitzpatrick v Sterling Housing Association*, which looked only at developments in the natural use of language and not at the non-discrimination requirements of the European Convention of Human Rights.

A person is the spouse of another for the purposes of the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002 (SI 2002/3078) whether or not the marriage was a marriage of convenience (*R. (Kimani) v Lambeth LBC* [2004] 1 W.L.R. 272, CA).

Stat. Def., Housing Finance Act 1972 (c.47) Sch.3 para.2; Capital Gains Tax Act 1979 (c.14) ss.136, 155(2).

See also MALE.

Stat. Def., Marriage (Scotland) Act 1977 s.2 inserted by Marriage and Civil Partnership (Scotland) Act 2014 s.1.

SPRAG. See MATERIALS.

SPREAD. The accidental fall of part of a load from a lorry did not amount to the “spreading of material” within the terms of a clause in an insurance policy (*Salmon Contractors v Monksfield* [1970] 1 Lloyd’s Rep. 387).

“The verb ‘spread’ may, no doubt, in some contexts indicate the occupation of or penetration into a greater geographic area. But in the context of disease it connotes, or may readily connote, an intensification or increase of the incidence of the disease, whether or not over a greater area, and in particular may connote, as it does naturally here, the spread of disease from one species to another: from badgers to cattle.” (*Badger Trust, R. (on the application of) v SSEFRA* [2012] EWCA Civ 1286.)

SPREAD BET. Stat. Def., s.3(2) of the Betting and Gaming Duties Act 1981 (c.63), substituted by para.1 of Sch.1 to the Finance Act 2001 (c.9).

Stat. Def. (in effect), Gambling Act 2005 (c.19) s.10.

SPREAD BETTING. For a judicial definition of spread betting see *Spreadex Ltd v Battu* [2005] EWCA Civ 855 at [2]–[3].

SPRING. “What is a spring (of water)? Is it where a defined channel of water first starts?” (per Herschell C., *Bradford v Pickles*, 64 L.J. Ch. 102). “A ‘spring of water’, both in law and ordinary language, is a definite source of water. A spring of water means a source of water of a definite and well-marked extent existing in nature” (per Jessel M.R., *Taylor v St. Helen’s*, 6 Ch. D. 264, cited WATERCOURSE). See also STREAM; cp. PUBLIC WELL.

SPRINGING. Executory limitations of realty in a will are called “executory devises”; in a deed they are called “springing or shifting uses” (Challis, R.P. (3rd edn) 174). “Phrases which properly refer to the mode of their limitation are, in practice, often confused or used interchangeably with phrases which properly refer to the nature of the interest taken under such limitations. This usage is especially frequent with respect to executory devises, e.g. an executory interest arising by executory devise, is often briefly styled an ‘executory devise’” (Challis). A “springing use” is an estate in realty which arises, by its own vigour, on the happening of an event or series of events, and which takes unto itself the legal estate in the realty by virtue of the Statute of Uses (27 Hen. 8, c.10).

“In *Cadell v Palmer* (1 Cl. & F. 372), the House of Lords settled the question of the extent to which executory limitations and shifting uses could be lawfully carried” (per

Farwell J., *Re Ashforth* [1905] 1 Ch. 543); see hereon per Parker J., *White v Summers* [1908] 2 Ch. 256; see also Conveyancing Act 1882 (c.49) s.10. See Law of Property Act 1925 (c.20) ss.1, 4, 39 and Sch.1.

"No limitation shall be construed as an executory or shifting use which can, by possibility, take effect by way of remainder" (per Farwell J., *Re Ashforth*, above, citing *Purefoy v Rogers*, 2 Saund. 380, 388, fn.9).

See "Contingent Remainder", under CONTINGENT.

SPRING-RICE'S ACT. Executors Act 1830 (11 Geo. 4 and 1 Will. 4, c.40).

SQUARE. Glass Duties Act 1787 (c.28) s.5, imposed a duty on all cast-plate glass which was to be "squared into plates of a superficies not less than 1485 inches"; whereon Eyre C.B. (*Att-Gen v Cast-Plate Glass Co*, 1 Anstr. 44), said, "I have no doubt in saying that the legislature used the word 'square' not in the strict, but in the common acceptation, confining it to rectangular, but not to equilateral, figures". Cp. SQUARE MILE.

Stat. Def., London Building Act 1930 (20 & 21 Geo. 5, c. clviii) s.5.

See HOLLOW SQUARE; STREET.

SQUATTER. A squatter, in unsettled lands of a colony, means "a person who has taken possession of a piece of land and occupied it by buildings or by cultivation, and has, by so taking possession of it, asserted a right to it" (*Hoggan v Esquimalt & Nanaimo Railway* [1894] A.C. 429). Semble, "settler" is synonymous (*Hoggan*).

Sometimes an intruder on land in England, and who acquires a possessory title thereto, is called a squatter (*Re Nesbitt and Potts*, 74 L.J. Ch. 310).

SPREAD BETTING. "Spread betting is not so much or not merely a bet, although it can be described as such, as a form of contract for differences. It enables a customer to take a position on a market (or an event) for a very small stake. Thus if the Dow Jones index is, say, at 10,000, one can 'buy' or 'sell' the market at a spread around the index of, for the sake of example, 10 points either way, 9990 to 10010. If one buys, one is betting that the market will rise above 10010. If one sells, one is betting that the market will fall below 9990. If one buys and the market rises, one stands to gain £1 for every point that the index exceeds 10010. If one sells and the market falls, one stands to gain £1 for every point that the index drops below 9990. If, however, one calls the market wrong, then one will stand to lose £1 for every point that the index exceeds the spread point in the wrong direction. Thus if one sells at 10,000 with a sell spread point at 9990, one will make £1 for every point the market falls below 9990 and lose £1 for every point the market rises above 9990. Until the bet or 'trade' is closed, the gains and losses are merely 'running' gains or losses. They are real enough, but constantly changing with every change in the index, and have not yet been fixed. Closing the bet will fix the position, win or lose. Unlike a classic bet, the customer can of course lose more than his stake. Indeed, on the example given, of a sale spread point of 9990 when the market is at 10,000, if the market does not move an inch, the customer will lose £10 for every £1 staked. Nor, again unlike a classic bet, are his winnings fixed at the outset by an agreement on odds. In theory winnings based on rising markets are infinite (in practice of course they are not) and losses based on falling markets are limited only in so far as they cannot exceed the consequences of a fall in the index to zero. 2 Normally, of course, to gain by £1 for every rise (or fall) of a single point in a stock market index such as the Dow Jones would take an investment of significantly more than £1. In effect, one's £1 bet commands a position in the market significantly greater than the stake. In other words, there is a large element of gearing in the trade,

and the situation is correspondingly volatile. Where the market in question is itself in a volatile phase, the risks become even greater. Thus, if the Dow Jones is capable of moving within a range of 100 or 200 points in a single day, the customer can be £100 to £200 richer or poorer per £1 stake within a matter of hours of his trade. On a trade of £100, those figures become £10,000 to £20,000. 3 The spread betting operator who accepts these trades does not bet against the customer, but lays off the trade elsewhere. Ultimately, I suspect, the trade is accumulated in some form of derivative transaction on a futures exchange, but I do not know. The operator, however, by laying off the bet elsewhere seeks to profit by means of the spread. The means by which it does that, and the terms on which it does that, however, are not a matter for the operator's customer: nor, in the present case, have the applicable terms been disclosed." (*Spreadex Limited v Dr Vijay Ram Battu* [2005] EWCA Civ 855.)

STAB. See CUT; WOUND. Cp. SLIT.

STABLE. Semble, a "stable" is a place for horse; a cow-house is not a "stable" (*R. v Haughton*, 5 C. & P. 559, cited OUTHOUSE); nor is a lumbershed, though originally built for and used as a stable (*R. v Colley*, 2 Moo. & R. 475).

Training stables: see *Lambton v Kerr* [1899] 2 Q.B. 233, cited BELONGING; SOLELY.

"Stable" belonging to a specified house: see *Maitland v Mackinnon*, 32 L.J. Ex. 49, cited BELONGING.

Stables, as part of a dwelling-house, for purposes of house tax: see BELONGING.

See MANSION; NUISANCE; WORKPLACE.

STABLESTAND. "'Stablestand' is a terme of the Forrest lawes, and it is when one is found standing in the forest with his bow bent, ready to shoot at any deere, or with his greyhounds in a lease ready to slip" (Termes de la Ley, citing Manwood, 133 b). See also Cowel.

STACK. "Stack of hay": see COCK OF HAY.

A quantity of straw packed on a lorry, in course of transmission to market, and left for the night in the yard of an inn, was not a "stack of straw" within "stack of corn, grain, pulse, tares, hay, straw, haulm, stubble" (Malicious Damage Act 1861 (c.97) s.17) (*R. v Satchwell*, L.R. 2 C.C.R. 21).

A score of faggots piled one upon another in a loft was not a "stack of wood" within Malicious Injuries to Property Act 1827 (c.30) s.17 (see Malicious Damage Act 1861 (c.97) s.17) (*R. v Aris*, 6 C. & P. 348).

STADIUM. "By the grant of *Stadium*, *Ferlingus*, or *Quarentena terræ*, doth pass a furlong or furrow long, which anciently was the 8th part of a mile" (Touch. 96; see also Co. Litt. 5B). "And *de ferlingis et quarentenis* you shall read divers times in the books of Domesday" (Co. Litt. 5B).

See QUARENTINE.

"Outdoor stadium". Stat. Def., Licensing (Northern Ireland) Order 1996 Art.2AA inserted by Licensing Act (Northern Ireland) 2016 s.2.

STAFF. See PERMANENT.

"Member of staff" (of school): Stat. Def., Education Act 1996 s.550AA inserted by Violent Crime Reduction Act 2006 s.45.

Stat. Def., Public Service Pensions Act 2013 s.37.

STAFFING COSTS. Stat. Def., Corporation Tax Act 2009 s.1123.

STAGE. Where a court, judge, or arbitrator has the power, e.g. to amend, strike out, refer, state a case, etc. "at any stage of the proceedings" (R.S.C. old Ord.15 r.6), the power applies so long as anything remains to be done to complete the judgment or

STAGE

award, e.g. the assessment of damages after judgment determining the liability (*The Duke of Buccleuch* [1892] P. 201; per Halsbury C., *Tabernacle Building Society v Knight* [1892] A.C. 298). But where the proceedings are complete, e.g. when the award has been made in an arbitration, the power is gone (*Re Palmer and Hosken* [1898] 1 Q.B. 131). Cp. PENDING.

Every culprit and his or her wife or husband was “a competent witness for the defence at every stage of the proceedings” (Criminal Evidence Act 1898 (c.36) s.1), i.e. at every stage where a denial might be pleaded; therefore, a culprit could not be sworn and give evidence before the grand jury (*R. v Rhodes* [1899] 1 Q.B. 77), nor, semble, in indictable cases, before the committing justices (per Hawkins J., *Anon*, 43 S.J. 36).

Goods remained in “a stage, process or progress, of manufacture” (Malicious Injuries to Property Act 1827 (c.30) s.3) if they were not brought into a condition fit for sale, although their texture was complete (*R. v Woodhead*, 1 Moo. & R. 549).

“At any stage of the proceedings” (R.S.C. Ord.15 r.6(2)). A stay of proceedings, even where ordered by consent upon all the parties agreeing terms of settlement, was not the equivalent of a dismissal or discontinuance of the proceedings, so that they remained at a “stage of the proceedings” for the purposes of this rule (*Rofa Sport Management AG v DHL International (UK)* [1989] 2 All E.R. 743).

See ENTERTAINMENT.

STAGE CARRIAGE. (Stage Carriages Act 1832 (c.120) s.48.) “There is no doubt that a vehicle which proceeds from stage to stage at regular, or more or less regular, intervals, and carries passengers who pay separate fares, is a stage coach or a stage carriage, whichever expression is preferred” (per Lord Goddard C.J., *Chapman v Kirke* [1948] 2 K.B. 450, 454).

A tramway car was a stage carriage, within the Glasgow Police Act 1866 (c. cclxxiii) (*Black v Neilson*, 35 Sc. L.R. 258), and so was a motor omnibus (*Dennis v Mike* [1924] 2 K.B. 399).

“Stage carriage service” (Public Passenger Vehicles Act 1981 (c.14) s.30(1)). Services twice daily in either direction between London, Luton and Gatwick airports, offering door-to-door service available on demand were held to be “stage carriage services” within the meaning of this section, notwithstanding that no exact route could be specified (*R. v Traffic Commissioners for the Metropolitan Traffic Area, Ex p. Licensed Taxi Drivers' Association* [1984] R.T.R. 197).

Stat. Def., Transport Act 1980 (c.34) s.3; Public Passenger Vehicles Act 1981 (c.14) s.2.

See also METROPOLITAN; HACKNEY CARRIAGE; OMNIBUS; CAB; STAGE WAGGON.

STAGE PLAY. In Theatres Act 1843 (c.68) s.23, “stage play” included “every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage, or any part thereof; provided always that nothing herein contained shall be construed to apply to any theatrical representation in any booth or show which, by the justices of the peace or other persons having authority in that behalf, shall be allowed in any lawful fair, feast, or customary meeting of the like kind”. A duologue was within that definition (*Thorne v Colson*, 25 J.P. 101). Dancers descending from rocks on to the stage with daggers in their hands and dancing in mimic warfare, the conclusion of the dance being accentuated by some of the dancers standing in triumph over the others, and who returned at the approach of a new set of dancers with palm leaves in their hands, the latter making an avenue to receive a

première danseuse who danced a pas seul, and then all formed a group with palm leaves and other stage properties was, semble, a “stage play”; but whether such, or any such like, performance was or was not a stage play was rather a question of fact than of law (*Wigan v Strange*, L.R. 1 C.P. 175). See hereon *Gray v The Oxford*, 21 T.L.R. 664. See **DRAMATIC**.

Stat. Def., Finance Act 1935 (c.24) s.1(4).

STAGE WAGGON. By a Local Turnpike Act persons who had paid any toll for the passing of any horse and carriage through a toll-gate, were exempt from paying toll again that day, but it was provided that the tolls payable in respect of horses drawing any “stage-coach, diligence, van, caravan, stage-waggon, or other stage-carriage”, should pay on re-passing; held, that “stage-waggon” signified a waggon that went and returned regularly from a fixed place to some other fixed place, at certain definite times (*R. v Ruscoe*, 7 L.J.M.C. 94).

See **STAGE CARRIAGE**.

STAGNUM. See **POOL**; **GURGES**.

STAIRCASE. “Staircase” (Factories Act 1937 (c.67) s.25(2), Factories Act 1961 (c.34) s.28(2)). Three steel steps wedged into a platform just over three feet high do not constitute a “staircase” for the purposes of these sections (*Kimpton v Steel Co of Wales* [1960] 1 W.L.R. 527).

STAKE (IN GAMBLING). Stat. Def., Gambling Act 2005 (c.19) s.353.

STALE. “Stale demand”: see *Re Sharpe* [1892] 1 Ch. 154, and cases there cited; **WAIVER**.

STALL. The continuous occupation of a portion of a market by an erection placed there for the purpose of selling goods, is a “stall” for which stallage is payable although the soil be not interfered with; therefore, a wooden or wicker basket (called in Norfolk a “ped”), having a lid which turns back, and which, when supported by a stool or pieces of wood not fixed in the soil, forms a table upon which goods are exposed for sale, is a “stall” (*Great Yarmouth v Groom*, 32 L.J. Ex. 74). See also *Caswell v Cook*, 11 C.B.N.S. 637.

A mobile snack bar capable of being separated from its towing van, and stationed for a substantial time in the layby of a highway for the purpose of doing business there, was held to be a “stall” “pitched” on the highway within the meaning of s.127(c) of the Highway Act 1959 (c.25) (*Waltham Forest LBC v Mills* (1979) 78 L.G.R. 248).

STALLAGE AND PICKAGE. “Stallage, is the right of putting up a stall in a fair or market, and also the money paid to the owner of the soil for so doing; pickage is the right of picking up the soil for that purpose, and the money paid to the owner of the soil for so doing” (Elph. 620, citing SPELM. *Stallagium*; *R. v Maydenhead*, Palm. 76; 2 Rol. Rep. 155; see hereon *Great Yarmouth v Groom*, 32 L.J. Ex. 74, cited **STALL**). See also *Newcastle v Worksop* [1902] 2 Ch. 156, cited **FAIR OR MARKET TOLLS**.

“‘Stallage’, that is to be quit of a certaine custome exacted for the street taken or assigned in faires and markets”. “‘Piccage’ is the payment of money, or the money payd, for the breaking of the ground to set up boothes and standings in faires” (Termes de la Ley).

Payments known as stallages or pickages are of a different nature from the franchise or market tolls which were extracted from buyers or, if custom supported the practice, from sellers, and which were only payable in respect of goods actually bought and sold in the market. The common law right of the public was to come into the market or fair to buy and sell goods, and the public had no right to erect stalls or to place their

goods on the ground in the market except for a purely temporary purpose. If a seller attempted to appropriate a portion of the ground to his exclusive occupation, he committed a trespass and could be sued by the owner of the soil, unless he obtained the owner's consent, and agreed with him on the payment to be made to him for the privilege or convenience of erecting a stall. This payment was called a "stallage", and if holes were made in the soil for poles or posts it was called a "pickage" (*Att-Gen v Colchester Corp* [1952] Ch. 586).

STAMP. In Stamp Acts, "'stamp' means as well a stamp impressed by means of a die as an adhesive stamp" (Stamp Act 1891 (c.39) s.122; excise labels were included in that definition (Stamp Act 1891 s.23). See also Stamp Duties Management Act 1891 (c.38) s.27. See also STAMPED; ADHESIVE STAMP; AVAILABLE; EVIDENCE OF A CONTRACT. Cp. MARK.

"Forged stamp" (Stamp Duties Management Act 1891 s.13): *R. v Lowden* [1914] 1 K.B. 144.

"Fictitious stamp": see LAWFUL EXCUSE.

Stat. Def., Forgery Act 1913 (3 & 4 Geo. 5, c.27) s.18; Weights and Measures Act 1963 (c.31) s.58(1); Trading Stamps Act 1964 (c.71) s.10; Weights and Measures Act 1985 (c.72) s.94.

STAMP DUTY. "Stamp duty" (Charities Procedure Act 1812 (c.101) s.3). The fee payable by way of impressed stamps on an originating petition under s.1 of this Act was held to be a court fee and not a "stamp duty" remitted by s.3 (*Re Elsie Inglis (London) Memorial Fund* [1954] 1 W.L.R. 407).

STAMPED. In Stamp Acts, "'stamped', with reference to instruments and material, applies as well to instruments and material impressed with stamps by means of a die as to instruments and material having adhesive stamps affixed thereto" (Stamp Act 1891 (c.39) s.122). See also Stamp Duties Management Act 1891 (c.38) s.27; STAMP.

"Duly stamped": see DULY.

"Properly stamped": see PROPERLY.

STAND. "Standing in my name" marks a bequest as specific (*Gordon v Duff*, 4 L.T. 598); or "standing in my name" may enlarge the meaning of the word "securities" (*Re Johnson*, 89 L.T. 84, cited SECURITY FOR MONEY). See also *Re Mayne* [1914] 2 Ch. 115.

Valuation of a partner's share as the same "stood" at a stated date: held to mean as it stood in the books of the partnership (*Blissett v Daniell*, 10 Hare, 511).

Hackney carriage "used in standing or plying for hire": see *Hawkins v Edwards* [1901] 2 K.B. 169, cited HACKNEY CARRIAGE.

Title "as it stands": see *Carter v Lornie*, 28 Sc. L.R. 177, cited INVESTIGATING.

"Stands for the time being limited to or in trust for any persons by way of succession" in Settled Land Act 1882 (c.38) s.2(1): see *Re Trafford's Settled Estates* [1915] 1 Ch. 9. See Settled Land Act 1925 (c.18) s.1; *Re Carnarvon's Settled Estates* [1927] 1 Ch. 138.

"Stand on the highway so as to cause any unnecessary obstruction thereof", as regards Motor Cars Order 1904 art.IV, see *Carpenter v Fox* [1929] 2 K.B. 458.

"Standing" (London Hackney Carriage Act 1831 (c.22) s.35) means something akin to waiting or parking and does not merely mean being stationary (*Eldridge v British Airports Authority* [1970] 2 Q.B. 387).

Machinery, etc. "standing" on premises: see ERECTED.

"Standing NETS": see STOP.

“Standing orders”: see ORDER.

Cargo “as it stands”: see AS IT STANDS.

“Standing to the credit”: see CREDIT.

Shares “standing in his own right”: see IN HIS OWN RIGHT.

See STANDING BY.

STANDARD. “‘Estandard or standard’ signifieth an ensigne in war; but it is also used for the principall or standing measure of the King” (Termes de la Ley, *Estandard*); see also Cowel. Cp. BANNER.

“Standard”, as applied to goods, is a common English word with no very precise or definite meaning, but it is generally intended to convey the notion that the goods in connection with which it is used are of high class, or superior quality or acknowledged merit; though registered, it was not a valid trade mark within the Canadian Trade Mark and Design Act 1879: see *Standard Ideal Co v Standard Sanitary Manufacturing Co* [1911] A.C. 78. See also *British & Mexican Shipping Co v Lockett* [1911] 1 K.B. 264, cited WORKING DAYS.

“Standard of remuneration” (National Insurance (Industrial Injuries) Act 1965 (c.52) s.14(6)). The comparison for the purposes of this section should be between the level of remuneration which the applicant would have received in his regular occupation in a normal working week, and the level of remuneration which he is now capable of receiving in a normal working week since his injury (*R. v National Insurance Commissioner, Ex p. Mellors* [1971] 2 Q.B. 401).

“Standard amenities”: this phrase in the Housing Act 1974 (c.44) refers to the amenities exclusively available to each dwelling and not to shared amenities; so that two flats which shared one bathroom and water closet were not equipped with the “standard amenities” (*FFF Estates v Hackney LBC* [1980] 3 W.L.R. 909). Stat. Def., Housing Act 1964 (c.56) s.43(1).

Stat. Def., “in relation to a volume of gas, means the volume of gas at a pressure of 101.325 kiloPascals and a temperature of 273 Kelvin” (Planning Act 2008 s.235).

See MEASURE.

STANDARD BASIS. See INDEMNITY BASIS.

STANDELL. “Is a young store oak-tree, which may in time make timber” (Cowel); this is correct “if the word ‘oak’ is expunged” (note to *Herring v St. Paul’s*, 3 Swanst. 514, where it is said that “as increasing the ‘store’ of timber, a standell is denominated a ‘storer’”).

STANDING. “Like Lord Dunedin in *D & J Nicol v Dundee Harbour Trustees*, I would not like to risk a definition of what constitutes standing in the public law context. But I would hold that the words ‘directly affected’ which appear in rule 58.8(2) capture the essence of what is to be looked for. One must, of course, distinguish between the mere busybody, to whom Lord Fraser of Tullybelton referred in *R v Inland Revenue Commissioners, Ex p National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617, 646, and the interest of the person affected by or having a reasonable concern in the matter to which the application related. The inclusion of the word ‘directly’ provides the necessary qualification to the word ‘affected’ to enable the court to draw that distinction. A personal interest need not be shown if the individual is acting in the public interest and can genuinely say that the issue directly affects the section of the public that he seeks to represent.” (*AXA General Insurance Ltd v Lord Advocate (Scotland)* [2011] UKSC 46.)

STANDING

STANDING BY. "Standing by" is that acquiescence in an infringement of a right which would make it fraudulent in the possessor of the right to afterwards set up his right; and, first the infringer must have made a mistake as to his legal rights; secondly, he must have expended some money or have done some act (not necessarily upon the possessor's land) on the faith of his mistaken belief; thirdly, the possessor of the legal right must know of the existence of his own right which is inconsistent with the right claimed by the infringer; fourthly, the possessor of the legal right must know of the infringer's mistaken belief of his rights; lastly, the possessor of the legal right must have encouraged the infringer in his expenditure of money or in the other acts which he has done; either directly or by abstaining from asserting his legal right (per Fry J., *Willmott v Barber*, 15 Ch. D. 105, 106; applied in *Civil Service Musical Instrument Association v Whiteman*, 68 L.J. Ch. 484).

See SILENCE; WAIVER.

STANLAWE. See LAW OR LAWE.

STANNARIES. "The Stannaries" of Devon and Cornwall: see Stannaries Act 1869 (c.19); and 1887 (c.43).

Stannaries Court abolished by Stannaries Court Abolition Act 1896 (c.45).

STARBOARD. "Directing course to starboard" (Regulations for Prevention of Collisions at Sea 1897 art.28; see now Regulations of 1910 art.28): see *The Aberdonian* [1910] P. 225.

START. "Start on a voyage": see SAIL.

"Starts work" (Employment Protection (Consolidation) Act 1978 (c.44) s.151 as substituted by Employment Act 1982 (c.46) Sch.2 para.7(1)) refers to the beginning of employment under the contract of employment and not the day on which it actually commenced, if that is different (*General of the Salvation Army v Dewsbury* [1984] I.C.R. 498).

STARTED (in context of legal proceedings). For the purpose of the limitation of actions, a claim is "brought" within the meaning of the Limitation Act 1980 when the claimants do what they have to do, namely deliver the claim to the court office, despite the fact that the claim is "started" within the meaning of rules of court only once the court has done what it must do, namely issue the process (*Barnes v St Helens Metropolitan Borough Council*, *Practice Note* [2006] EWCA Civ 1372).

STARTING PRICES. Stat. Def., Finance Act 1952 (c.33) s.4(2); Betting and Gaming Duties Act 1981 (c.63) s.10.

STATE. Knowledge of the "state and condition of the property sold" does not cover knowledge of rubbish upon the property, but relates to its physical condition (*Cumberland Consolidated Holdings Ltd v Ireland* [1946] K.B. 264).

"The State" (Official Secrets Act 1911 (c.28) s.1(1)) does not mean the Government or the Executive not the individuals inhabiting this island, i.e. Great Britain, but rather the country or the realm, or better still as a synonym, the organised community (*Chandler v DPP* [1962] 3 W.L.R. 694).

The words "necessary to maintain the hereditament in a state to command that rent" in s.2(2) of the Valuation for Rating Act 1953 (c.42) modified only the immediately preceding words "other expenses if any" and not the earlier words "repairs and insurance". The word "state" in s.2(3) does not include state of repair (*Wexler v Playle* [1960] 1 Q.B. 217).

“Any foreign state” (Patents Act 1949 (c.87) s.24(2)) is not limited to States which are recognised but includes any sufficiently defined area of territory over which a foreign government has effective control (*Re Al-Fin Corporation's Patent* [1970] R.P.C. 70).

Although a number of international agreements which apply to or in the United Kingdom contain propositions expressed in terms of “the State”, not least the European Convention on Human Rights, when these propositions come to be translated into propositions of domestic law it is necessary to operate by reference to a particular public body. That is because “the state is not an entity recognised by English public law in its present stage of development” (*R. (K.) v Camden and Islington Health Authority* [2001] 3 W.L.R. 553 at 586 per Sedley L.J.).

Stat. Def., Wills Act 1963 (c.44) s.6(1); Civil Jurisdiction and Judgments Act 1982 (c.27) s.31(5).

Stat. Def., s.37(5) of the Freedom of Information Act 2000 (c.36).

See STATES; ACT OF STATE; ACTUAL STATE; CURRENT STATE.

“Same State”: see SAME.

STATE (OF PREMISES). The House of Lords gave (by a 3:2 majority) a purposive interpretation of the phrase “any premises in such a state as to be prejudicial to health or a nuisance” in s.79(1)(a) of the Environmental Protection Act 1990 (c.43) (*Birmingham City Council v Oakley* [2000] 3 W.L.R. 1936, HL). Their Lordships concluded that the Act was directed at the presence in premises of a feature in itself prejudicial to health as a source of infection, disease or illness and did not extend to matters of layout or inadequacy of facilities. Lord Slynn observed (1939 E-F): “Taken literally, it can be said that the ‘state of the premises’ is capable of a broad meaning to include a consideration of the layout, even unavoidable use within the layout. But a narrower meaning is equally possible. One must therefore look at the purpose of the legislation and for that consider the history of the legislation and the context of these words in the Act of 1990 together with previous judicial interpretations”. See also *R. v Bristol City Council, Ex p. Everett* [1999] 1 W.L.R. 92, Q.B.D., per Richards J.: “I have reached the conclusion that the situation here under consideration is not capable of giving rise to a statutory nuisance within s.79(1)(a) of the Act of 1990. I accept the general thrust of [Counsel’s] submissions that this statutory regime is not intended to apply in cases where the sole concern is that, by reason of the state of the premises, there is a likelihood of an accident causing personal injury. In reaching that conclusion, I am influenced more by the legislative background and apparent legislative purpose of the provisions than by their actual language”; (and note, appeal dismissed [1999] 1 W.L.R. 1170, CA); for a discussion of *Oakley* see *New Law Journal*, May 11, 2001, p.701.

STATE AID. State aid is an advantage granted directly or indirectly through State resources or constituting an additional charge for the State or for bodies designated or established by the State for that purpose. It must amount to an economic advantage which the recipient would not have obtained under normal market conditions (*Linde AG v Commission of the European Communities* [2003] 2 C.M.L.R. 7, ECJ, CFI; see also *Ministre de L'Economie v GEMO SA* [2004] 1 C.M.L.R. 9, ECJ).

“24 Article 87(1) EC defines State aid which is governed by the EC Treaty as aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States. The

concept of aid within the meaning of that provision is wider than that of a subsidy because it embraces not only positive benefits, such as the subsidies themselves, but also measures which, in various forms, mitigate the normal burdens on the budget of an undertaking.” (*Re Grupo de Empresas Alvarez: Spain v Commission* [2004] 3 C.M.L.R. 1038, ECJ.)

“27. It must then be borne in mind that Article 92(1) of the Treaty lays down the following conditions for a measure to be classified as State aid. First, there must be an intervention by the State or through State resources. Second, the intervention must be liable to affect trade between Member States. Third, it must confer an advantage on the recipient. Fourth, it must distort or threaten to distort competition . . .” (*Heiser v Finanzamit Innsbruck* (Case C-172/03) [2005] 2 C.M.L.R. 18).

“The concept of State aid within the meaning of [art.87(1) EC] is wider than that of a subsidy because it embraces not only positive benefits, such as the subsidies themselves, but also measures which, in various forms, mitigate the normal burdens on the budget of an undertaking.” (*AEM SpA* (Case C-128/03) ECJ.)

Because the effect and not the form of an arrangement determines whether something is aid, rebates or exemptions from an obligation to pay energy taxes might, as a matter of principle, constitute state aid (*Fesil v EFTA Surveillance Authority* (Case E-5/04) EFTA Court).

As to whether the sale of land to an undertaking by a public authority amounts to state aid, see *Valmont Nederland BV v Commission of the European Communities* (Case T-274/01) CFI.

In determining whether a measure is State aid it is necessary to consider whether it is financed by the State or through State resources, its selectivity and its effect on trade between Member States and the distortion of competition (*Ministero Dell'Economia E Delle Finanze v Cassa Di Risparmio di Firenze Spa* (Case C-222/04) ECJ).

For the purposes of art.87(1) of the EC Treaty, to be classified as aid an arrangement needs to satisfy four conditions: intervention by the State or through State resources; intervention liable to affect trade between Member States; conferring an advantage on the recipient; and distortion or threatened distortion of competition (*Essent Netwerk Noord BV v Aluminum Delfzijl BV* (Case C-206/06) ECJ [2008] 3 C.M.L.R. 32).

See AID; STATE RESOURCES.

STATE AIRCRAFT. Stat. Def., “an aircraft engaged in military, customs, police or similar services” (Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008 (SI 2008/3133) art.3(1)).

STATE AUTHORITY. (EC Collectives Redundancy Directive 75/129.) A privatised water company, having regard to its powers and duties and the control to which it was subject, was an authority of the state (*Foster v British Gas* followed; *Doughty v Rolls Royce* considered) (*Griffin v South West Water Services* [1995] I.R.L.R. 15).

STATE DETENTION. Stat. Def., a person is in state detention if he or she is compulsorily detained by a public authority within the meaning of s.6 of the Human Rights Act 1998 (c.42) (Coroners and Justice Act 2009 s.48).

STATE RESOURCES. For the purposes of art.87(1) of the European Community Treaty (state aid) it is immaterial whether aid is granted directly by the state or by a public or private body established or designated by the state with a view to administering aid. But for advantages to be classed as state aid they must be granted,

first, directly or indirectly through state resources (*Re Aid to Stardust Marine: France v EC Commission* [2002] 2 C.M.L.R. 1069, ECJ).

STATED ACCOUNT. See SETTLED.

STATED AMOUNT. A direction in a will to pay all rates, taxes and outgoings in respect of a house was held not to be a provision for the payment of a “stated amount”, for (as explained in *Re Bird*, below) the provision was in substance for the discharge of certain obligations, and was not directed to the payment of any particular sum. A direction to pay, while the testator’s horses and dogs were living, a stated amount weekly for the maintenance of each horse and each dog was held to be a provision for payment of a “stated amount” (*Re Hawkins* [1943] Ch. 67).

A direction that if the income of a fund after deduction of income tax should not reach £500, the trustees were to make up the deficiency out of capital, was held to be a provision for the payment of a “stated amount”. A fluctuating amount which can be definitely ascertained from time to time is within the section (*Re Bird* [1944] Ch. 111). See also PROVISION; VARIED.

The provisions of s.25(1) of the Finance Act 1941 (c.30) as to the payment of income tax on an annuity of a stated amount given free of tax did not mean that the amount had to be definitely fixed by the provision granting the annuity. The words were satisfied where the amount was described by reference to a formula and ascertainable by means of that formula even though the amount might vary thereby from year to year. Thus, where the income of an annuitant was to be brought up to a certain sum net, the unspecified but ascertainable amount required to do so was the stated amount (*Re Berkeley, Borrer v Berkeley* [1945] Ch. 107, approved in the House of Lords [1946] A.C. 555, 565, 576, 587; the order was reversed on other grounds). See also *Re Pointer* [1946] Ch. 324 (order for weekly payments under the Inheritance (Family Provision) Act 1938 (c.45) s.1).

A direction in a will to pay to a beneficiary the income of a trust fund, subject to a proviso that if such income after deduction of income tax thereon exceeded £500 the surplus was to be held on discretionary trusts, was held to be a provision for the payment of a stated amount (*Re Lyons, Lyons v Lyons*, 114 L.J. Ch. 324).

See also *Re Banbury* [1951] Ch. 1, cited PAYMENT.

STATED PERIOD. See PERIODICAL; CERTAIN TIME.

STATELESS. “95. The word stateless in s.40 (4) means de jure stateless, not de facto stateless in the sense discussed above: see *Fransman’s British Nationality Law*, third edition, paragraph 25.4 and *Abu Hamza v The Secretary of State for the Home Department* (SIAC, 5th November 2010).

96. The words ‘if he is satisfied that’ in s.40 (4) of the 1981 Act do not mean that the Secretary of State’s opinion is the yardstick. These words must be construed in a manner which is consistent with article 8.1 of the 1961 Convention. In the result therefore the Secretary of State cannot make an order depriving a person of British citizenship if the consequence will be to render that person de jure stateless.” (*B2 v Secretary of State for the Home Department* [2013] EWCA Civ 616.)

See NATIONALITY.

STATEMENT. The “statement of assets and liabilities” in a declaration of solvency made for the purposes of a voluntary winding up under s.283(2)(b) of the Companies Act 1948 (c.38), is valid and satisfies the requirements of the section if it can reasonably and fairly be described as such a statement, even if errors are later discovered in it (*De Courcy v Clement* [1971] Ch. 693).

STATEMENT

A “statement” within s.14(1) of the Trade Descriptions Act 1968 (c.29) is not confined to a statement inducing the entering into of a contract. It may constitute an offence even though the contract has been completed and payment has been made (*Breed v Cluett* [1970] 2 Q.B. 459). A statement as to the qualifications or experience of a person carrying on a business providing “services” goes to the likely quality of the services, and is therefore a “statement” within the meaning of this section which, if false, will render that person liable to prosecution (*R. v Breeze* [1973] 1 W.L.R. 994).

A document in the form of a test record produced by a breathalyser apparatus was a “statement” within the meaning of s.10(3)(a) of the Road Traffic Act 1972 (c.20) as substituted by s.25(3) and Sch.8 to the Transport Act 1981 (c.56) (*Gaimster v Marlow* [1984] 2 W.L.R. 16).

“Statement of the reasons” (Immigration Appeals (Notices) Regulations 1984 (SI 1984/2040) reg.4(1)(a)). A statement by an immigration officer that she was not satisfied that the applicant was genuinely seeking entry only for the one week asked for was a sufficient “statement of the reasons” for the purposes of this regulation (*R. v Secretary of State for the Home Department, Ex p. Swati* [1986] 1 All E.R. 717).

“Any statement made by or taken from a child” (Magistrates’ Courts Act 1980 (c.43) s.103, as substituted by Criminal Justice Act 1988 (c.33) s.33). A transcript made from a video-tape of a police interview with a child was held to be a “statement” within the meaning of this section (*R. v H.* (1991) 155 J.P. 561).

“Statement contained in a document produced by a computer” (Police and Criminal Evidence Act 1984 (c.60) s.69(1)). Records of telephone calls made by the accused, recorded automatically and shown on computer print-outs were held not to be “statements” for the purposes of this section and could therefore be admitted in evidence (*R. v Spiby* (1990) 91 Cr.App.R. 186).

“Statement made by a person in a document” (Criminal Justice Act 1988 (c.33) s.23(1)). Where a person had been injured and died before the trial but after having made a statement to a police officer, recorded by him at the time, that statement was a “statement” in a “document” within the meaning of this section (*R. v MacGillivray* (1993) 97 Cr.App.R. 232, CA).

“A statement prepared . . . for the purpose . . . of a criminal investigation” (Criminal Justice Act 1988 (c.33) s.24(4)). A supermarket receipt recording a certain purchase as evidence of the facts recorded in it was not a “statement” so prepared within the meaning of this section (*R. v Murphy, Wiseman and Maron* [1992] Crim.L.R. 883).

Stat. Def., Civil Evidence Act 1995 (c.38) s.13; “words, pictures, visual images, gestures or any other method of signifying meaning” (Defamation Act 1996 (c.31) s.17(1)).

Stat. Def., Criminal Evidence Act 1965 (c.20) s.1(4); Civil Evidence Act 1968 (c.64) s.10.

In s.2 of the Defamation Act 1996 a reference to a statement is to a particular statement within a publication rather than to the publication as a whole (*Warren v The Random House Group Ltd* [2007] EWHC 2856 (QB)).

Stat. Def., “references to a statement are references to a communication of any description, including a communication without words consisting of sounds or images or both” (Terrorism Act 2006 s.20(6)).

Stat. Def. “words, pictures, visual images, gestures or any other method of signifying meaning” (Defamation Act 2013 s.15).

“At the outset, we note that the word ‘statement’ is defined in the Oxford English Dictionary as ‘something which is stated ... a written or oral communication setting forth facts’. A definition in the Chambers Dictionary is ‘a thing stated, especially a formal written or spoken declaration’. Accordingly a communication of some sort is required, whether written or oral. Conduct alone will not satisfy the requirements of s.106, although conduct may shed light on the meaning or import of the statement given.” (Morrison, *Petition of Timothy Denis v Alistair Carmichael MP and Alistair Buchan in Respect of the Election for the Orkney and Shetland County UK Parliamentary Constituency Held On 7 May 2015* [2015] ScotEC EC_90.)

STATEMENT OF CLAIM. See PLEADING.

STATEMENT OF FACT. See FACT; FALSE STATEMENT.

STATEMENT SETTING OUT AMOUNT. Note (5) of Group 2 of Sch.9 to the Value Added Tax Act 1994 (exemptions) requires a document to be prepared containing a statement setting out every amount that the customer was required to pay in connection with the transaction otherwise than by way of premium. “In my opinion it is far from clear that the phrase ‘a statement setting out every amount’ in Note (5)(b), giving the words their ordinary meaning and reading them in context, are incapable of including a formula by which the figure which represented the fee for arranging the insurance could be ascertained. . . . The matter is put beyond doubt however by applying the approach indicated by the decisions of the [European] Court of Justice . . . The words of the note must be construed in a way that is least detrimental to the taxpayer. On the undisputed facts of this cases, the construction of Note (5)(b) for which the Commissioners of Customs and Excise contend would have the effect of denying the exemption to the taxpayer although sufficient information to enable the relevant figure to be worked out was disclosed to the customer. There is not kind of a suggestion that there was any evasion, avoidance or abuse or that the exemption could not be applied correctly. I think that the taxpayers are entitled to a finding that the relevant requirements are satisfied.” (*Smith Glaziers v Commissioners of Customs and Excise* [2003] 1 W.L.R. 656 at 668–69, HL per Lord Hope.)

STATION. A condition on a railway excursion ticket that if “used for any other station than that named, the ticket will be forfeited” means what it says (*Great Northern Railway v Palmer* [1895] 1 Q.B. 862).

There must be something very exceptional in its circumstances to make a siding a “station” within Regulation of Railways Act 1873 (c.48) s.14 (*Pelsall Coal Co v London & North Western Railway*, 7 Ry. & Can. Traffic Cas. 36, which, semble, overrules *Harborne Railway v London & North Western Railway*, 2 *ibid.* 169).

“Traffic to and from the stations of each company”: see *Central Wales Railway v London & North Western Railway*, 4 Ry. & Can. Traffic Ca. 101; see also *Gilmour v North British Railway*, 30 Sc. L.R. 450.

“A station means, not a mere building, but a place where the trains are to stop on a railway” (per Cotton L.J., in *Re Ruthin, etc. Railway Act*, 32 Ch. D. 438).

“Stations of the Cross”: see *Re St. Mark's* [1898] P. 114.

“Polling station”: see POLLING.

See COMPETITIVE; RAILWAY STATION.

STATION TO STATION. An ordinary contract (and though not as common carriers) to carry from “station to station”, involves an obligation to unload and deliver

STATIONARY

at the receiving station, or at least to provide proper appliances for that purpose (per Hawkins J., *Royal National Lifeboat Institute v London & North Western Railway*, 3 T.L.R. 601).

STATIONARY. To be “stationary”, within art.9 of the Regulations for Preventing Collisions at Sea 1863 (see Regulations of 1910 art.9), a fishing vessel must not have more way on than is necessary to keep herself under command whilst attached to her nets. If it is necessary, even for the purpose of rendering her fishing more effective, that she should have more way on, she is not “stationary”, and must carry the lights of a vessel underway (*The Dunelm*, 9 P.D. 164; see thereon *The Tweedsdale*, 14 P.D. 164, followed in *The Upton Castle* [1906] P. 147). See also *The Edith*, Ir. Rep. 10 Eq. 345. Cp. STRANDING. A steam trawler with her trawl down, and showing the triplex light, is practically stationary, and has no duty on her to keep out of the way of an approaching sailing vessel or steamer: see *The Grove-hurst* [1910] P. 316, approving *The Tweedsdale*, above, and overruling *The Craigelachie* [1909] P. 1.

A person engages in street trading in or from a “stationary position in a street” within s.17 of the London CC (General Powers) Act 1947 (c. xlvii) when he stopped perambulating with his barrow for the purpose of serving customers (*Southwark BC v Nightingale*, 64 T.L.R. 563).

“Made stationary” (Salmon and Freshwater Fisheries Act 1923 (c.16) s.92(1)). A net to which anchors were attached to act as a brake or drag was not “made stationary” (*Percival v Stanton* [1954] 1 W.L.R. 300).

See FIXED ENGINE.

STATIONARY TECHNICAL UNIT. See *R. (Anti-Waste Ltd) v Environment Agency* [2007] EWCA Civ 1377.

STATIONED. “Stationed” (Caravan Sites and Control of Development Act 1960 (c.62) s.13(a)). Caravans are not “stationed” on an area where one or two of them have casually stopped for a night or more even though there may have been other caravans which have stopped in the vicinity over several years (*Biss v Small-burgh RDC* [1965] Ch. 335).

STATIONER. What amounts to a breach of covenant not to let premises for the business of a “stationer”: see *Brigg v Thornton* [1904] 1 Ch. 386, cited LET, where the words were “artistic and heraldic stationer”.

STATISTICS BOARD. Stat. Def., Statistics and Registration Service Act 2007 s.1.

STATUARY. “Statuary” obviously includes a marble bust chiselled by an artist or marble full-length figure; *secus*, of a terra cotta bust which cannot, without averment on the record, be brought within even a trade meaning of “statuary” (*Sutton v Ciceri*, 15 App. Cas. 144).

STATUS. “Alteration in the status” of members of a company (Companies Act 1862 (c.89) s.131—see Companies Act 1948 (c.38) s.282): see *Re National Bank of Wales*, 66 L.J. Ch. 225; cited SHARE.

Status, as regards legitimacy of children: see CHILD; NEXT-OF-KIN; Legitimacy Act 1926 (c.60).

“Status is one indivisible whole. If a man alters his status, he alters the whole of it; though his rights under his new status may, in many respects, be similar to those possessed under his old” (per Farwell J., *Re Selot* [1902] 1 Ch. 492).

Status of a thing is ascertained once for all by a judgment in rem: see REM.

See OTHER STATUS.

STATUTE. Is, in its primary meaning, synonymous with Act of Parliament.

STATUTE MERCHANT. This, as also statute staple, was a form of security for money formerly much in use: see hereon *Termes de la Ley*; Jacob, *Statute*; 2 Bl. Com. 160.

STATUTE OF DISTRIBUTION. 22 & 23 Car. 2, c.10.

Devise of all testator's realty and personalty to the "person or persons who under the Statute of Distribution of Effects of Intestates would have been entitled thereto" if he had died intestate; held to mean that the law would divide his property for him, and therefore that the realty went to the heir (*Kühne v Hudson*, 39 S.J. 468). Cp. NEXT OF KIN.

"Statutes for the distribution of the personal estate of intestates at the death of the settlor". As meaning the (pre-1926) Statutes of Distribution, see *Re Hooper's Settlement* [1943] Ch. 116. Cf. *Re Sutton* [1934] Ch. 209.

The expression "Statutes of Distribution" held not to include Intestates Estates Act 1890 (c.29): see *Re Morgan* [1920] 1 Ch. 196. See Administration of Estates Act 1925 (c.23) Sch.2.

STATUTE OF FRAUDS. 29 Car. 2, c.3.

STATUTE OF LIMITATIONS. It is possible that the term 'statute of limitation' should be applied only to an Act which imposes a time limit for the enforcement of an existing time limit, as distinct from an Act which creates a fresh cause of action and also imposes a time limit for its enforcement (*Gregory v Torquay Corp* [1911] 2 K.B. 442).

STATUTE OF USES. 27 Hen. 8, c.10.

STATUTE STAPLE. See STATUTE MERCHANT.

STATUTORY BODY. Stat. Def., Armed Forces Act 1996 (c.46) s.21(5).

STATUTORY CORPORATION. See *Att-Gen v Manchester* [1906] 1 Ch. 643, cited CORPORATION.

STATUTORY DECLARATION. Stat. Def., Interpretation Act 1978 (c.30) Sch.1.

STATUTORY DEMAND. See DEMAND.

STATUTORY DUTY. Prima facie a person who has been injured by the breach of a statute has a right to recover damages from the person committing it unless it can be established, by considering the whole of the Act, that no such right was intended to be given (*Monk v Warbey* [1935] 1 K.B. 75—damages recovered by third party against motorist who was in breach of s.35 of the Road Traffic Act 1930). See also *Gregory v Ford* [1951] 1 All E.R. 121, where a servant who was negligent when driving his master's vehicle was entitled to recover from the master indemnity for the damages payable as the master was in breach of the statutory duty of insuring under s.35; and see *Corfield v Groves* [1950] 1 All E.R. 488.

An action for damages was held not to lie for selling impure milk contrary to the Food and Drugs (Adulteration) Act 1928 (c.31) s.2, which made it an offence, punishable by fine, to sell any article of food or any drug which was not of the nature, or not of the substance, or not of the quality of the article demanded by the purchaser (*Square v Model Farm Dairies (Bournemouth) Ltd* [1939] 2 K.B. 365).

As to "negligence" in the performance of a statutory duty, in the sense of an invasion of rights which is not shown to be necessarily incident to such performance, see *Provender Mills (Winchester) Ltd v Southampton CC* [1940] Ch. 131. And see NEGLIGENCE.

As to contributory negligence by a person injured through breach of statutory duty, (e.g. to fence machinery), see *Caswell v Powell Duffryn Associated Collieries Ltd*

STATUTORY

[1940] A.C. 152; *Lewis v Denye* [1940] A.C. 921; and as to workman's carelessness as a defence to a prosecution, *Carey v Steam Coal Co* [1938] 1 K.B. 365, cited EXPOSE.

The maxim *volenti non fit injuria* does not apply in cases of breach of statutory duty (*Wheeler v New Merton Board Mills Ltd* [1933] 2 K.B. 669).

The Prison Rules 1933 were directory only; a departure from them did not in itself confer a right of action on a prisoner (*Arbon v Anderson* [1943] K.B. 252).

"The formulation of a common law duty as a statutory regulation has the formidable effect of subjecting those who infringe it to penal consequences. It also has the effect in a civil action of depriving the infringer of the benefit of the plea of *volenti non fit injuria*" (per Lord Normand *Alford v National Coal Board* [1952] 1 T.L.R. 687).

A claim for damages for breach of a statutory duty is a specific common law right not to be confused with a claim for negligence (see per Lord Wright, *London Passenger Transport Board v Upson* [1949] A.C. 155).

Employers are in breach of the duty imposed upon them by the Coal Mines Act 1911 (c.50) ss.49, 102, to make the roof and sides of travelling roads secure if they do not do everything reasonably practicable to make them secure: see *Edwards v National Coal Board* [1949] 1 K.B. 704.

The duties imposed by the Road Transport Lighting Act 1927 (c.37) are public duties only, and not duties for breach of which an individual can have a cause of action (*Clark v Brims* [1947] K.B. 497).

As to the duties imposed upon railways in connection with level crossings, see *Knapp v Railway Executive* [1949] 2 All E.R. 508; *Low v Railway Executive*, 65 T.L.R. 288.

A police officer investigating a crime is performing his "statutory duties" within the meaning of the Borough of Reading (Parking Places for Disabled Drivers) Order 1975 art.11 (*George v Garland* [1980] R.T.R. 77).

See also RECEIVER.

STATUTORY FREEHOLD. See per Evershed M.R., *Tithe Redemption Commission v Runcorn UDC* [1954] Ch. 383.

STATUTORY FUNCTION. Stat. Def., Public Service Pensions Act 2013 s.37.

STATUTORY FUNCTIONS. Stat. Def., "functions conferred by virtue of any enactment" (Northern Ireland Act 1998 (c.47) s.44(10)).

STATUTORY HEALTH BODY. Stat. Def., Health Act 2006 s.45.

STATUTORY INSOLVENCY ARRANGEMENT. Stat. Def., Income Tax (Trading and Other Income) Act 2005 s.259 inserted by Finance (No.2) Act 2005 Sch.6.

STATUTORY INSTRUMENTS. Stat. Def., Statutory Instruments Act 1946 (c.36) s.1(1).

STATUTORY OBJECTS. Trade Union Act 1913 (c.30) s.1(2): see *Hardie & Lane Ltd v Chilton* [1928] 1 K.B. 663.

STATUTORY POWER. "Statutory power to enforce a right or to satisfy a claim or lien" (Fertilisers and Feeding Stuffs Act 1926 (c.45) s.24). The power here referred to was the statutory power of sheriffs, bailiffs and others who had statutory duties to perform in protecting the rights of others, but who were not commercially interested in the sale (*GC Dobell & Co v Barber and Garratt* [1931] 1 K.B. 219).

Statutory powers: see COMPULSORY POWERS; and as to remedy for damage caused by their exercise, see *St. James Electric Light Co v The King*, 73 L.J.K.B. 518, and cases there cited; *East Fremantle v Annois* [1902] A.C. 213; per Halsbury C.,

Canadian Pacific Railway v Roy [1902] A.C. 220, citing Lord Hatherley, *Geddis v Bann Reservoir Proprietors*, 3 App. Cas. 438; but see *Lagan Navigation Co v Lambeg, etc. Co* [1927] A.C. 226; *Brand v Hammersmith Railway*, L.R. 2 Q.B. 223, cited INJURIOUSLY AFFECTED; EXECUTION OF STATUTORY POWERS; NUISANCE. The purposes of land acquired under statutory powers are generally speaking to be adhered to: see COMPULSORY POWERS. As to the qualified ownership in, and the non-assignability of statutory powers of a quasi-public nature, see *Edinburgh Street Tramways Co v Edinburgh* [1894] A.C. 456; *Eccles v South Lancashire Tramways Co* [1912] A.C. 465, cited TRAMWAYS; see also UNLESS; *Quebec Railway, etc. Co v Vandry* [1920] A.C. 662.

STATUTORY PROVISION. “Statutory provision regulating service of process” (the old R.S.C. Ord.9 r.8; but see now Ord.65 r.3): see *Logan v Bank of Scotland* [1904] 2 K.B. 495.

Stat. Def., Industrial Tribunals Act 1996 (c.17) s.42(1); Defamation Act 1996 (c.31) s.17(1).

Stat. Def., “means a provision contained in an Act or in subordinate legislation within the meaning of the Interpretation Act 1978 (c.30)” (s.39 of the Education Act 2002 (c.32)).

Includes measures: National Institutions Measure 1998 (No.1) s.12(1).

STATUTORY RECEIPT. Statutory receipt by a building society: see Building Societies Act 1874 (c.42) s.42 and Sch., on which see *Fourth City Building Society v Williams*, 14 Ch. D. 140; *Robinson v Trevor*, 12 Q.B.D. 423; *Sangster v Cochrane*, 28 Ch. D. 298; *Hosking v Smith*, 13 App. Cas. 582; see also *Crosbie Hill v Sayer* [1908] 1 Ch. 866. See also Law of Property Act 1925 (c.20) s.115.

STATUTORY RULES. See RULES.

STATUTORY TENANT. Statutory tenant, within meaning of Increase of Rent and Mortgage Interest (Restrictions) Acts: see *Nunn v Pelegrini* [1924] 1 K.B. 685; *Turner v Watts*, 44 T.L.R. 105; *Lovibond v Vincent*, 98 L.J.K.B. 402; *Roe v Russell*, 97 L.J.K.B. 290; *Moodie v Hosegood* [1952] A.C. 61.

Stat. Def., Rent (Agriculture) Act (c.80) ss.2–5; Rent Act 1977 (c.42) s.2.

STATUTORY UNDERTAKERS. Stat. Def., Regional Development Agencies Act 1998 (c.45) s.19(10).

STATUTORY UNDERTAKING. Stat. Def., Local Government etc. (Scotland) Act 1994 (c.39) s.59(9).

STAUNCH. See TIGHT.

STAY. Stay of execution under Bankruptcy Act 1883 (c.52) s.4(1) (see Bankruptcy Act 1914 (c.59) s.1): see *Bond v Capital & Counties Bank* [1911] 2 K.B. 988.

STAY AND TRADE. A policy which covers a ship during “her stay and trade” at a place, means during her stay there for the purposes of trade; and a stay for a purpose unconnected with trade is a deviation (*African Merchants v British & Foreign Marine Insurance*, L.R. 8 Ex. 154). See DEVIATE.

STAYED. Bankruptcy notice on final judgment, “execution thereon not having been stayed” (Bankruptcy Act 1914 (4 & 5 Geo. 5, c.59) s.1), connotes that the creditor must be in a position to issue execution on the judgment (*Re Woodall*, 13 Q.B.D. 479, cited CREDITOR), which he cannot do pending the trial of an inter-pleader issue as to goods which have been seized under a *fiери-facias* on the judgment; for execution on the judgment is necessarily “stayed” till that issue is determined (*Re Ford*, 18 Q.B.D. 369); *secus* where a *fiери-facias* has been withdrawn in response to a

STAYING

claim made by a stranger to the goods seized (*Re a Debtor* [1902] 2 K.B. 260). See also *Re Lupton*, 55 S.J. 717. As to the effect of an agreement to stay, see *Re Smith* [1903] 1 K.B. 33; *Re S.* [1907] 2 K.B. 896.

STAYING. For factors constituting staying in a country, see *Proceedings concerning Kozlowski* (C-66/08) [2009] 2 W.L.R. ECJ.

STAYING WITH. See RESIDENCE.

STEAL. See THEFT.

See Larceny Act 1916 (c.59) s.1; Theft Act 1968 (c.60) ss.1(1), 24(4).

STEAM ENGINE. See ENGINE; ERECT.

STEAM NAVIGATION. The breakdown of an engine, the disabling of a screw, and things of that kind, are risks of steam navigation (per Coleridge C.J., *Mercantile SS Co v Tyser*, 7 Q.B.D. 73).

STEAMER; STEAMSHIP. In a bill of lading, a steamship or steamer means a SHIP in which the principal motive-power during the voyage is steam. (per Cockburn C.J., *Fraser v Telegraph Construction Co*, L.R. 7 Q.B. 568).

For the meaning in bills of lading of the phrase “steamer shall be entitled to commence discharging immediately after arrival”, see *The Coahoma County* [1924] P. 95.

For meaning of the expression “by steamer” in a marine insurance policy, see *Re Traders’ & General Insurance Association* [1924] 2 Ch. 187.

“Shipment by steamer”: see SHIPMENT.

See PASSENGER STEAMER; SAILING VESSEL; STEAM LAUNCH; STEAM VESSEL.

STEEL. See IRON.

STEER. See CATTLE.

STEEERAGE PASSAGE. In Merchant Shipping Act 1894 (c.60) s.268(4), “‘steerage passage’ shall include passages of all passengers except cabin passengers”: see *Morris v Howden* [1897] 1 Q.B. 378, cited PASSAGE BROKER.

STELL NET. See NET; STOP.

STENT NET. See NET.

STEP. A solicitor’s letter before action is not a step in the action (*Longstaffe v Woodrow*, 38 S.J. 275).

Where there was a charge of “taking steps” to evade purchase tax the steps taken had to be specified (*Robertson v Rosenberg* [1951] 1 T.L.R. 417).

“Taking of steps with a view to the fraudulent evasion of tax” (Finance Act 1972 (c.41) s.38(1)). Where a trader, who had a turnover which obliged him to register for VAT, decided not to do so, he had taken “steps” within the meaning of this section as soon as he started to operate the business in such a way as to implement his decision (*R. v McCarthy* [1981] S.T.C. 298).

“Steps in the proceedings” (Arbitration Act 1950 (c.27) s.4). The filing of an affidavit and attendance before the master to defend a summons issued by the plaintiffs for leave to enter summary judgment under R.S.C. Ord.14 were “steps in the proceedings” within the meaning of this section (*Turner and Goudy v McConnell* [1985] 2 All E.R. 34). A defendant who ticked the boxes in the form acknowledging service of a writ, to indicate that he wished to apply for a High Court action commenced in a district registry to be transferred to London or to another district registry, was held not to have taken a “step in the proceedings” (*Skopos Design Group v Homelife Nursing*, *The Times*, March 24, 1988). Seeking to stay or dismiss a third party action under the inherent jurisdiction of the court and under R.S.C. Ord.18

r.19(1) did not amount to taking a “step” in the third party proceedings (*RGE (Group Services) v Cleveland Offshore* (1986) 11 Con.L.R. 77).

(Arbitration Act 1950 (c.27) s.5.) A consent order (in this case consent to an interpleader payment) did not amount to “a step in the proceedings” which could prevent a stay of those proceedings in favour of arbitration (*Hickie v Alternative Software Ltd* [1996] 6 C.L. 40).

“Steps . . . to enforce any security” (Insolvency Act 1986 (c.45) s.11(3)(c)). In the case of an ordinary possessory lien, the assertion by the lien holder of a right to retain constituted the taking of a “step” to enforce his security within the meaning of this section (*Bristol Airport v Powdrill* [1990] 2 W.L.R. 1362). The detention by a creditor of a debtor’s aircraft was a step to enforce a security within the meaning of this section (*Re Paramount Airways*) [1990] B.C.C. 130).

“Step to commence arbitration proceedings” (Arbitration Act 1950 (c.27) s.27). Where a rent review clause provided for arbitration and stipulated certain time limits to be of the essence, a late notice was invalid and not therefore “a step to commence arbitration proceedings” within the meaning of this section (*Richurst v Pimenta* [1993] 1 W.L.R. 159).

“In my judgment, there is no reason artificially to narrow the concept of what constitutes a ‘step’ within the meaning of s.20(3). Any modification of, or qualification to, the PCP in question which would or might remove the substantial disadvantage caused by the PCP is in principle capable of amounting to a relevant step. The only question is whether it is reasonable for it to be taken.” (*Griffiths v The Secretary of State for Work And Pensions* [2015] EWCA Civ 1265.)

See FRESH STEP.

STEP (IN PROCEEDINGS). An application for a stay pending an arbitration was not a “step in the proceedings” within the meaning of s.9(3) of the Arbitration Act 1996 if the applicant invoked or accepted the court’s jurisdiction, provided that the acceptance was conditional on the failure of the application for a stay (*Capital Trust v Radio Design* [2001] 3 All E.R. 756, Ch). The Court of Appeal upheld the decision, deciding that an application for summary judgment is not a step in the proceedings within the meaning of s.9(3) of the Arbitration Act 1996 because it does not demonstrate an election by a party to abandon his right to a stay of proceedings (*Capital Trust v Radio Design* [2002] 2 All E.R. 159, CA).

STEP-CHILD. In relation to civil partnership: Stat. Def., Civil Partnership Act 2004 (c.33) s.246.

STEP-DAUGHTER. A bequest of residue to testator’s “step-daughter” held valid in favour of a daughter by his supposed wife, though such woman had a husband living at the time of the marriage ceremony between her and the testator and which husband was living at testator’s death (*Wilkinson v Joughin*, L.R. 2 Eq. 319).

See DAUGHTER.

STEP-IN RIGHTS. Stat. Def., para.6 of Sch.2A to the Insolvency Act 1986 (c.45), inserted by Sch.18 to the Enterprise Act 2002 (c.40).

See *Feetum v Levy* [2005] EWCA Civ 1601.

STEP-PARENT. Stat. Def., Sexual Offences Act 2003 (c.42) s.27.

STERLING. “‘Sterling’ is, of course, simply the name of our currency, English pounds, shillings and pence” (per Denning L.J., *Treseder-Griffin v Co-operative Insurance Society* [1956] 2 Q.B. 127).

Sterling was not lost even though the Coinage Act 1971 (c.24) introduced decimalisation which replaced pounds, shillings and pence with pounds and (new) pence.

STERN. See AT OR NEAR.

STETHE or STEDE. "Stethe or stede betokeneth properly a banke of a river, and many times a place, as stowe doth" (Co. Litt. 4B).

STEVEDORE. "Formerly the loading and unloading a ship was done by the master, but it has been found necessary, particularly with regard to large cargoes, that some person should be employed to load and unload who is especially accustomed to that business. Hence has arisen the use of stevedores, who are in the position of persons exercising an independent employment. In one sense the stevedore is the AGENT of the shipowner, because he is set in motion by him; but still he is not such agent for whose acts the shipowner is liable" (per Willes J., *Murray v Currie*, L.R. 6 C.P. 27). See Merchant Shipping (Stevedores and Trimmers) Act 1911 (c.41).

See EMPLOYED; SEA-GOING.

STEWARD. Steward "is a word of many significations", but in s.78, Litt., "it signifieth an officer of justice, namely a keeper of courts, etc." (Co. Litt. 61A, b, q.v.). See also Cowel; Jacob.

As to the right of a steward of a manor to have the custody of the manorial court rolls, see *Re Jennings* [1903] 1 Ch. 906; distinguished *Beaumont v Jeffery*, 132 L.T. 246. (Copyhold tenure abolished: see Law of Property Act 1922 (c.16) Pt V.)

Stat. Def., Stamp Duty Act 1891 (c.39) s.122; Copyhold Act 1894 (c.46) s.94; Settled Land Act 1925 (c.18) s.117.

STEWARTRY. See COUNTY; SHERIFFDOM.

STICHE. A SELION (Elph. 621, citing SPELM, *Selio*).

STILL. Trust property "still retained" by a trustee (Trustee Act 1888 (c.59) s.8(1); cp. Limitation Act 1939 (c.21) s.19) meant property which, at the time of action brought, the trustee actually had or had the power of getting (*Thorne v Heard* [1895] A.C. 495; *Re Page* [1893] 1 Ch. 304; *Re Timmis* [1902] 1 Ch. 176, cited TRUSTEE; *Re Jordison* [1922] Ch. 440). See CONVERT; RETAIN.

Stat. Def., Spirits Act 1880 (c.24) s.3.

STINT. Common of pasture "without stint", or "sans nombre", does not mean that you are entitled to depasture on the common as many commonable animals as you please (*Mellor v Spateman*, Wms. Saund. (6th edn) 339, 340, 346); it connotes that the number is "unmeasured" (3 Bl. Com. 239), i.e. not precisely ascertained. If there is no precise regulation, the number of animals cannot exceed those which are, or could be, ordinarily levant and couchant on the land to which the right is annexed (*Morley v Clifford*, 20 Ch. D. 753; *Clayton v Corby*, 5 Q.B. 415, cited PROFIT À PRENDRE).

STIPEND. A bequest of "£100 for masses for the repose of my soul at the stipend of 5s. each"; held, in Ireland, as meaning "at the price" of, etc. and as not involving any attempt to create a perpetuity (*Phelan v Slattery*, 19 L.R. Ir. 177).

Stat. Def., Clergy Pensions Measure (9 & 10 Eliz. 2, No.3) 1961 s.46(1).

STIPENDIARY. "Stipendiary lands": see FEUD.

"Stipendiary magistrate": Stat. Def., Administration of Justice Act 1973 (c.15) Sch.1 para.3; Justices of the Peace Act 1979 (c.55) s.70; Judicial Pensions Act 1981 (c.20) s.33. See MAGISTRATE.

STIPULATED. Semble, “it is stipulated” imports an agreement or covenant, but not a condition; yet if the phrase is “it is stipulated and conditioned”, it will operate both as an agreement or covenant, and a condition (*Doe d. Henniker v Watt*, 8 B. & C. 308).

See EXPRESSLY STIPULATED.

STIPULATION. See *Hill v Fox*, 4 H. & N. 364.

“Stipulation” in mortgage charge in Land Registry: see per Cozens-Hardy L.J., *Capital & Counties Bank v Rhodes* [1903] 1 Ch. 655–657, cited LEGAL ESTATE.

STIRPES. See PER STIRPES.

STOCK. Stat. Def., Trustee Act 1925 (15 Geo. 5, c.19) s.68; Companies Act 1948 (c.38) s.455; Finance Act 1963 (c.25) s.59(4); Finance Act 1920 (c.18) s.42; Finance Act 1980 (c.48) s.100; “includes any marketable security” (Finance Act 1986 (c.41) s.80B(2) inserted by Finance Act 1997 (c.16) s.97(1)).

See FOREIGN; GOVERNMENT STOCK; JOINT STOCK; NOMINAL; PUBLIC STOCKS; AVERAGE STOCK; FARMING STOCK; LIVE AND DEAD STOCK; LIVESTOCK; PER STIRPES.

STOCK AWASH. Anchor carried “stock awash”, Thames Bye-laws (1872) r.20, altered to “ring awash” by Thames Bye-laws (1898) r.11: see *The J.R. Hinde* [1892] P. 231; *The Six Sisters* [1900] P. 302; *The Hornet* [1892] P. 361.

STOCK IN THE FUNDS. See FUNDS.

STOCK-IN-TRADE. This phrase comprises all such chattels as are acquired for the purpose of being sold, or let to hire, in a person’s trade; but, probably, utensils in trade are also included in the phrase (*Seymour v Rapier*, Burb. 28). Setting aside a mere dictum in *Elliott v Elliott* (11 L.J. Ex. 3), the only modern authority on the interpretation of this phrase, standing alone, seems to be *Re Richardson* (50 L.J. Ch. 488). In that case the testator was a barge-builder, and, according to the custom of that trade, he would sometimes, on the sale of a new barge, accept an old one in part payment which he would repair and let out on hire; at the time of his death he had five of such barges: held, that these barges passed under a bequest of his “stock-in-trade as a barge-builder”.

On a dissolution of a partnership, “the stock-in-trade, property, and effects of the business” had to be valued and a proportion thereof paid for to the retiring partner; held, that goodwill was not to be included as within the phrase (*Chapman v Hayman*, 1 T.L.R. 397); but see *Re David and Matthews* [1899] 1 Ch. 378, cited GOODWILL. See hereon *Re Leas Hotel* [1902] 1 Ch. 332.

A bequest of “my stock-in-trade and trade debts” passes it and them as existing at the death of the testator (*Ferguson v Ferguson*, Ir. Rep. 6, Eq. 199, where Sullivan M.R., rested his judgment mainly on *Goodlad v Burnett*, 1 K. & J. 341, cited MY).

Copyrights are not stock-in-trade for tax purposes (*Mason v Innes* [1967] Ch. 1079).

Stat. Def., Revenue (No.1) Act 1864 (c.18) s.9; but as to the then duty on fire insurances, see Revenue Act 1869 (c.14) s.12 and Sch.C.

See LIVE AND DEAD STOCK.

STOCK IN TRADE (IN CONTEXT OF MOTOR VEHICLES). Stat. Def., Value Added Tax Act 1994 (c.23) Sch.6 para.1A inserted by Finance Act 2004 (c.12) s.22.

STOCK LENDING ARRANGEMENT. Stat. Def., Income Tax Act 2007 s.568.

STOCKBROKER. See BROKER; SHARE-BROKER. Cp. JOBBER.

STOLEN

As to a stockbroker's lien, see *Re London & Globe Finance Corp* [1902] 2 Ch. 416, and cases there cited.

STOLEN GOODS. For a discussion of the circumstances in which stolen goods can "continue to be stolen goods", or not, see *Att-Gen's Reference (No.1 of 1974)* [1974] Q.B. 744.

Stat. Def., Theft Act 1968 (c.60) s.24(4); Limitation Act 1980 (c.58) s.4(5).

STONE. Blocks cut with wedges from a quarry, and then reduced to certain dimensions and squared to be used as sleepers, are (in an Act imposing toll) "stone", as distinguished from "merchandise" (*Fisher v Lee*, 10 L.J.Q.B. 1); but coprolites are "goods wares or merchandise", as distinguished from "stone" (*Dant v Moore*, 9 L.T. 381). See GOODS, WARES, AND MERCHANDISE; MINE.

"Stone, concrete, slag" (Construction (General Provisions) Regulations 1961 (SI 1961/1580) Sch.2). A household brick is not a similar material to stone, concrete or slag (*Hobb v Robertson (C.G.)* [1970] 1 W.L.R. 980).

Stat. Def., Weights and Measures Act 1963 (c.31) Sch.1 Pt 5.

STOP. To "stop up" a highway (Highways Act 1815 (c.68) s.2) did not include a power to narrow a road (*R. v Milverton*, 6 L.J.M.C. 73).

A stop order is an ex parte order, on a fund in court, obtained by a person (not, necessarily, a party to the action or matter) claiming the same or a share thereof or a lien or charge thereon, and which prohibits dealings with the fund without notice to the person obtaining the order (Dan. Ch. Pr. (8th edn), Ch.23, s.4; R.S.C. Ord.46 r.12, now Ord.50 r.10). A *Distringas* was a writ issued from the Court of Exchequer having a like effect on stock or shares in a public company; in its stead, a new writ of *distringas* was provided by Court of Chancery Act 1841 (c.5) s.5, which was only issuable against the Bank of England. But see R.S.C. Ord 46 r.4, now Ord.50 r.11, under which the chief effect of a *distringas* is now obtained by a stop notice. Cp. CHARGING ORDER.

"Stop . . . and navigate with caution" in Regulations for Preventing Collisions at Sea 1910 art.16: see *The Union* [1928] P. 175.

"Stopped" (of a cage in a coal mine): see *Garallan-Coal Co Ltd v Anderson* [1927] A.C. 59.

"Stop list" of a trade protection association: see *R. v Denyer*, 95 L.J.K.B. 699; *Hardie & Lane Ltd v Chilton* [1928] 2 K.B. 306; but see *Thorne v Motor Trade Association* [1937] A.C. 797, which settles the dispute between these two cases, one of which was civil and the other criminal.

"Stop" (Road Traffic Act 1960 (c.16) s.77(1), now Road Traffic Act 1972 (c.20) s.25(1)) means stop and stay with the vehicle long enough, in the prevailing circumstances, to provide the information required under this section to be given to any interested person (*Lee v Knapp* [1967] 2 Q.B. 442; *Ward v Rawson* [1978] R.T.R. 498). "Stop" means refraining from leaving the scene of the accident (*R. v Criminal Injuries Compensation Board, Ex p. Carr* [1981] R.T.R. 122).

"Stopped for the purpose of complying with regulation 8" ("Zebra" Pedestrian Crossing Regulations 1971 (SI 1971/1524) reg.10(b)). A vehicle which stops at a pedestrian crossing to allow a pedestrian to cross has "stopped for the purpose of complying with regulation 8", namely to accord precedence to such pedestrian, even although the pedestrian has not set foot on the crossing (*Gullen v Ford; Prowse v Clarke* [1975] 1 W.L.R. 335).

See WITHDRAWN; SLACKEN; MARGINAL NOTES. Cp. SUSPEND.

STOPPAGE. "Stoppage of trains" in a charterparty: see *The Village Belle*, 30 L.T. 232, cited CIVIL COMMOTION.

"Stoppage of trains . . . or any cause beyond the personal control" of the charterer, includes want of trucks or waggons into which to load, where such mode of loading is customary (*Turnbull v Cruickshank*, 42 Sc. L.R. 207). Cp. DETENTION BY RAILWAYS.

"Stoppage *in transitu*" is when goods have been consigned on credit and the consignee has become bankrupt, or failed, or has declared himself insolvent (see per Mellish L.J., *Ex p. Chalmers*, 8 Ch. 289), the consignor may in many cases countermand delivery, and before or at their arrival at the place of destination, may cause them to be delivered to himself or to some other person for his use (Abbott (14th edn), Pt 3, Ch.9); see also Sale of Goods Act 1893 (c.71) ss.44-46, on which see *M'Dowall & Neilson's Trustees v Snowball*, 42 Sc. L.R. 56, and *Dobell v Neilson*, 42 Sc. L.R. 283, cited APPROVED BILL; *Jobson v Eppenheim*, 21 T.L.R. 468; Carver (9th edn), Pt 3, Ch.17); Add. C. (11th edn), 612 et seq.: Wms. Bank. (16th edn) 295, 296; *Wiseman v Vandeputt*, Tudor's L.C.M.L. 410; *Mordaunt v British Oil & Cake Mills* [1910] 2 K.B. 502, cited ASSENT; *Re Johnson*, 99 L.T. 305.

"Strikes or stoppages" of workmen: see *Stephens v Harris*, 57 L.J.Q.B. 203, cited STRIKE.

Stoppage by strike "continued for a period of six running days" construed to mean a stoppage in existence at the beginning of the loading time (*Steel v Grand Canary Coaling Co*, 90 L.T. 729).

"Stoppage at collieries": see *Arden SS Co v Mathwin & Son* [1912] S.C. 211.

STORAGE. "'Storage charges' comprise the cost of putting into store and the rent of the place hired; they do not include expenditure on the goods themselves", e.g. the cost of fodder and food to cattle is not within "storage charges" in York-Antwerp Rules 1890 r.10c (per Bigham J., *Anglo-Argentine Agency v Temperley Co* [1899] 2 Q.B. 403, cited GENERAL AVERAGE).

"Purposes of storage" (Rating and Valuation (Apportionment) Act 1928 (c.44) s.3) includes cold storage (*Union Cold Storage Co v Bancroft (Manchester Revenue Officer)* [1931] A.C. 459 at 492). "Storage" includes the stacking of timber in such a way as to facilitate its drying out (*Buncombe v Baltic Sawmills Co* [1961] 1 W.L.R. 1181). But premises used for the warehousing of whisky in cask, and for its blending and bottling, were not used for "storage" within the meaning of this section (*Lanarkshire Assessor v Arbuckle, Smith & Co* (1968) S.L.T. 20; *Bell (Arthur) & Sons v Fife Assessor* (1968) S.L.T. 185).

"Storage" (Industrial Development Act 1966 (c.34) s.1(3)). Gas container vehicles, into which gas is pumped on manufacture, are being used for "storage" up to the point where the vehicle moves off for the purpose of delivery (*British Oxygen Co v Minister of Technology* [1971] A.C. 610).

"Storage" implied a degree of permanence and could not include property placed temporarily (*Plews v Plaisted* (1997) S.L.T. 1371).

STORE. As to when gasoline is "stored or kept" on premises, see *Thompson v Equity Fire Insurance*, 80 L.J.P.C. 13.

To remove a drum of petrol from a shed to a garage and there empty it is not to "store" petrol in the garage: see *Jefferson v Derby Farmers Ltd* [1921] 2 K.B. 281.

See also EX-STORE; IN STORE. Cp. WAREHOUSE.

Stat. Def., Explosives Act 1875 (c.17) s.108.

STOREHOUSE

STOREHOUSE. “Storehouse” (Volunteer Act 1863 (c.65) s.26): see *Pearson v Holborn* [1893] 1 Q.B. 389.

In regulations made under Locomotives on Highways Act 1896 (c.36) s.5: see *Appleyard v Bingham* [1914] 1 K.B. 258.

STORER. See STANDELL.

STORES. Bunker coals are “stores” within the meaning of s.24 of the River Humber Pilotage Act 1832 (c. cv): see *The Nicolay Belozwetow* [1913] P. 1. See also *The Tongariro* [1912] P. 297, cited NAVIGATING IN BALLAST.

“Arms, munitions of war, and stores”: see ARMS.

“Stores and other effects”: see EFFECTS.

Stat. Def., Public Stores Act 1875 (c.25) s.2; Customs and Excise Management Act 1979 (c.2) s.1.

See IRON; TACKLE.

STOREY. As regards the definition of topmost storey in London Building Act 1894 (c. ccxiii) s.5(14), semble, it is of general acceptance, for a “storey” need not necessarily be a room with four vertical walls; a room built into the roof is a “topmost storey” (*Foot v Hodgson*, 25 Q.B.D. 160).

House “let in different storeys, tenements, lodgings, or landings”: Sch.B r.6 of the House Tax Act 1808 (c.55) (per Lord Brampton, *Grant v Langston* [1900] A.C. 390, cited HOUSE).

STORM. While the word “storm”, used in the insured perils clause of an insurance policy, might involve an element of violence in the sense of rapid movement of air or water, it was not to be restricted to that meaning, nor to the particular technical significance of the Beaufort Scale. It could also properly be used to cover an extreme or unusually intense precipitation (*Glasgow Training Group (Motor Trade) v Lombard Continental*, *The Times*, November 21, 1988).

(JCT Standard Form of Building Contract (1980) Private Edition with Quantities cl.22C.) Heavy rainfall could amount to “storm” although this was a question of fact and degree (*Nimmo (William) & Co v Russell Construction* (1995) S.L.T. 1282 (O.H.)).

STOW. A valley (Co. Litt. 4B); but a few lines further down “stowe” is said to signify a place.

STOWAGE. “Stowage under the supervision of the captain”: a clause in a charterparty providing for such stowage by the charterers was held not to limit the charterers’ liability to stow safely, save so far as damage could be shown to be due to the intervention of the captain in the matter of stowage (*Canadian Transport Co v Court Line Ltd* [1940] A.C. 934).

“Improper stowage”: see IMPROPER NAVIGATION.

STRADDLING BET. Stat. Def., Betting and Gaming Duties Act 1981 (c.63) s.5AB(6) as inserted by the Finance Act 2003 (c.14) s.7(6).

STRAND. “‘Strond’ is a Saxon word, signifying a shore or bank of a sea or any great river” (Cowel).

STRANDING. In a marine insurance, “a touch and go” is not a stranding; “in order to constitute a stranding, the ship must be stationary” (per Ellenborough C.J., *Macdougale v Royal Exchange Assurance*, 4 M. & S. 503). “If the ship merely touches or strikes and gets off again, how much soever she may be injured, she is not stranded; but if she settles and remains for any time, this is a stranding, without reference to the degree of damage which she sustains (*Harman v Vaux* 3 Camp. 429). A resting for 15

or 20 minutes has been held to be a stranding, whether it be upon a bank or a rock (*Baker v Towry* 1 Starkie, 436). It is not, however, every stationary taking the ground that constitutes a stranding. Thus, where a vessel takes the ground in the ordinary and usual course of navigation and management in a tidal river or harbour, upon the ebbing of the tide, or from a natural deficiency of water, so that she may float again upon the flow of the tide or increase of the water, this is not a stranding within the meaning of the memorandum (*Magnus v Buttemer* 11 C.B. 876; see also *Corcoran v Gurney* 22 L.J.Q.B. 113). So, when a vessel took the ground several times in going up a harbour in the ordinary course of navigation from the shallowness of the water, this was held to be no stranding (*Hearne v Edmunds* 1 Brod. & B 388). Similarly, where a vessel took the ground in a tidal harbour, where it was intended she should do so at the time she was moored, and was injured by striking against some hard substance, this was considered not to be a stranding (*Kingsford v Marshall* 1 L.J.C.P. 135). See also *Bryant & May v London Assurance* 2 T.L.R. 591.

"But it is otherwise where the ground is taken under circumstances of such an accidental and unforeseen character as not to be in the usual course of navigation (see judgment of Lord Tenterden, *Wells v Hopwood*, 3 B. & Ad. 20; *Letchford v Oldham* 5 Q.B.D. 538). And where a ship was improperly fastened to a pier in a basin, so that she took the ground, and when the tide left her, she fell over and was bilged, this was held to be stranding (*Carruthers v Sydebotham* 4 M. & S. 77; see also *Bishop v Pentland* 6 L.J.O.S.K.B. 6). So, where the water being drawn off from an inland navigation for the purpose of repairing it, a vessel settled accidentally upon some piles which were not previously known to be there (*Rayner v Godmond* 5 B. & Ald. 225); where a vessel, having struck upon an anchor in a harbour, was injured and in danger of sinking, and was thereupon hauled higher up the harbour and drawn upon the ground, where she remained for some time (*Barrow v Bell* 4 L.J.O.S.K.B. 47); where a ship under stress of weather made a tidal harbour, but it being low water she grounded there (*Corcoran v Gurney*, above); and where a ship was run aground for the purpose of preventing further mischief (*De Mattos v Saunders* L.R. 7 C.P. 570); these were all held to be cases of stranding" (1 Maude & P. 496). So, where a Thames barge was run ashore, partly from fear she would sink and partly for repair; that was held to be a stranding (per Day J., *Russell v Lodge*, 6 T.L.R. 353).

"The stranding of a lighter, in the legal technical sense of 'stranding', is an event of very frequent occurrence on a flat shore. The mere taking of the ground and remaining there a short time and then getting off again, would be held a 'stranding'" (per Tindal C.J., *Hoffman v Marshall*, 2 Bing. N.C. 390).

The warranty against average, in an insurance on cargo, "unless the ship be stranded, sunk, or burnt", is not deleted if the stranding, etc. happens when the goods are not on board (*The Alsace and Lorraine* [1893] P. 209; see also *The Glenlivet* [1893] P. 164, also cited BURN). See hereon Marine Insurance Act 1906 (c.41) Sch.1 r.14.

See PERIL OF THE SEA; SINK; STATIONARY.

STRANGER. "'Stranger' may be derived from the French *estrangier*, *aliena*. It signifies generally in our language, a man born out of the land, or unknown; but in the law, it hath a special signification, for him that is not privy or party to an act. As a stranger to a judgment, is he to whom a judgment doth not belong; and in this sense it is directly contrary to party or privy" (Cowel). See CONSIDERATION.

STRANGERS

Stranger, in regard to copyhold fines on admittance: see *Att-Gen v Sandover* [1904] 1 K.B. 689; see Law of Property Act 1922 (c.16) s.128.

An independent contractor is not a “stranger” within the principle of an occupier’s exemption from liability for the consequences of a fire caused in his house by a stranger (*Balfour v Barty-King*; *Hyder and Sons (Builders) Third Parties* [1957] 1 Q.B. 496).

As to who is a “stranger”, for whose fire an occupier might not be responsible for its escaping, see *Emanuel (H. & N.) v Greater London Council* [1971] 2 All E.R. 835.

STRANGERS IN BLOOD. Formerly this term applied for the purposes of succession to illegitimate children but the Family Law Reform Act 1987 (c.42) s.1 now lays down as a rule of construction that references to relationships such as parent and child, brother and sister are to be construed, unless a contrary intention appears, without regard to whether or not any person’s mother or father were married to each other at any particular time. See also Legitimacy Act 1976 (c.31) s.1(1).

STRATEGIC HEALTH AUTHORITY. Stat. Def., National Health Service Act 2006 s.13.

STRATEGY. “The *Oxford English Dictionary* defines a ‘strategy’ as a ‘plan of action designed to achieve a long term or overall aim’. In adopting only the ‘architecture and principles’, the Executive adopted something that was inchoate. There is no evidence before me that this inchoate strategy was ever finalised. There is no evidence that it was ever crafted into a road map designed to tackle the issues referred to in the section [46]. A strategy is intended to guide, to set a course. It must therefore be implicit in the idea of a strategy that that strategy must be identifiable, it must be complete, it must have a start, a middle and an end, it must aim to be effective, its effectiveness must be capable of measurement and the actions which are taken in attempting to implement that strategy must be referable back to that overarching strategy. In order for a strategy to fulfil these implicit requirements and to inform all the many stakeholders that an anti-poverty strategy must necessarily inform, it must be a written document (or a collection of strategy level documents intended to be read together as such). It must be capable of being referred back to and of providing policy level guidance to the stakeholders charged with achieving its goals.” (*Committee on the Administration of Justice (CAJ) and Brian Gormally’s Application* [2015] NIQB 59.)

STRAW. Stubble, or, as it is called in Cambridgeshire, haulm, was not “straw” within Malicious Injuries to Property Act 1827 (c.30) s.17 (*R. v Reader*, 4 C. & P. 245). In the replacing enactment (Malicious Damage Act 1861 (c.97) s.17), “haulm” and “stubble” were used as well as “straw”.

STRAY. Animals “straying” on a highway “implies that they were not in charge of someone who had control over them” (per Blackburn J., *Lawrence v King*, L.R. 3 Q.B. 345, cited LYING ABOUT). See also *Underwood v Henderson*, 36 Sc. L.R. 58, cited PERMIT; *Ellis v Banyard*, 55 S.J. 500. See ESTRAY.

No right of stray, or of roaming at will, is acquired by the mere user by the public of an open space belonging to a private owner (*Robinson v Cowpen*, 62 L.J.Q.B. 619; 63 L.J.Q.B. 235). Cp. DEDICATION.

Where dams, anxious to rejoin their calves penned on the other side of a railway line, broke down an adequate fence which was in good repair, they were held not to have “strayed” within s.68 of the Railway Clauses Consolidation Act 1845 (c.20) (*Cooper v Railway Executive* [1953] 1 W.L.R. 223).

STREAM. “‘Stream’ is properly a current of waters running over the level at random, and be not kept in with banks or walls; and so Linwood saith, that *flumen* which is a stream *nihil aliud est quam ipsa aqua*” (Callis, 83).

“‘Stream’, in its primary and natural sense, denotes a body of water having, as such body, a continuous flow in one direction. It is frequently used to signify running water at places where its flow is rapid as distinguished from it sluggish current in other places. I see no reason to doubt that a subterraneous flow of water may, in some circumstances, possess the very same characteristics as a body of water running on the surface; but, in my opinion, water, whether falling from the sky or escaping from a spring, which does not flow onward with any continuity of parts but becomes dissipated in the earth’s strata and simply percolates through or along those strata until it issues from them as a lower level, through dislocation of the strata or otherwise, cannot with any propriety be described as a stream” (per Lord Watson, *McNab v Robertson* [1897] A.C. 134). In accordance with that definition the majority of the House of Lords held that a grant in a lease of “the right to the water in the said ponds and in the streams leading thereto” did not include the water in a tiled drain in the lessor’s adjoining land which drain intercepted water that otherwise would have found its way into the ponds. Halsbury C., was the dissenting peer and he said, “Though it be true that the word ‘stream’, in its more usual application, does point to a definite stream within defined banks, I do not think it is confined to that meaning. We speak of a stream of tears flowing from the eyes, and we speak of blood streaming from a vein”.

“A stream of water, in law, is water which runs in a defined course. It is that which is capable of diversion; and it has been held that it does not include the percolation of water below ground” (per Jessel M.R., *Taylor v St. Helen’s*, 6 Ch. D. 264, cited WATERCOURSE) Cp. SPRING.

Contextually, a grant of “all streams” has been held to mean all water in the land granted (*Whitehead v Parks*, 27 L.J. Ex. 169).

In Rivers Pollution Prevention Act 1876 (c.75), an elaborate definition of “stream” was provided by s.20, on which see *Ribble River Committee v Croston* [1897] 1 Q.B. 251. See also *West Riding Rivers Board v Preston*, 92 L.T. 24; *Airdrie Magistrates v Lanark CC* [1910] A.C. 286.

“Stream” was used synonymously with “river” in Salmon Fishery Act 1861 (c.109) s.27 (*Rolle v Whyte*, L.R. 3 Q.B. 305).

In Waterworks Clauses Act 1847 (c.17) s.3, “streams” included “springs, brooks, rivers, and other running waters”. “Owners or occupiers” of a stream, within s.6 of that Act, were the owners and occupiers of that portion of it with which a water company might be interfering (*Bush v Trowbridge Water Co*, 10 Ch. 459, cited TAKE, which see also as to “take or use” a stream).

“Stream” (Ayr and Calder Navigation Act 1774 (c.96) s.97) only applied to artificial streams (*Smith v Barnham*, 1 Ex. D. 419, cited WATERCOURSE).

“Navigable stream”: see *West Riding Rivers Board v Gaunt*, 67 J.P. 183, cited SEWER; NAVIGABLE.

“Natural stream or watercourse” (Public Health Act 1875 (c.55) s.17): these words did not include an agricultural ditch made by a landowner for the sole purpose of draining his land or removing from it superfluous water. Such a ditch was however a “sewer”, within s.42 of the same Act, but being a sewer made by a person for his own

STREET

profit within s.13(1), did not vest in the local authority: see *Phillimore v Watford Rural DC* [1913] 2 Ch. 434. See also *Maxwell-Willshire v Bromley*, 87 L.J. Ch. 241.

"Whilst in stream" in a charterparty did not refer to the mere presence of the ship in the stream but meant whilst she was loading in the stream (*VM Salgaoncar e Irmaos of Vasco de Gama v Goulendis Bros* [1954] 1 W.L.R. 481).

Stat. Def., Water Supplies (Exceptional Shortage Orders) Act 1934 (c.37) s.1 Sch.; Rivers (Prevention of Pollution) Act 1951 (c.64) s.11; Control of Pollution Act 1974 (c.40) s.56.

See SEWER; WATERCOURSE.

STREET. "In Public Health Act 1875 (c.55) s.149, and the sections which follow it [but see now the replacing sections of the Highways Act 1959 (c.25)], the word 'street' manifestly has the same sense as when we speak of a man going out of his house into the street"; i.e. its primary meaning of the roadway (per Selborne C., *Robinson v Barton*, 8 App. Cas. 798; see also *Midland Railway v Watton*, above; *Richards v Kessick*, 57 L.J.M.C. 48; *Coverdale v Charlton*, 4 Q.B.D. 104, *R. v Fullford*, below). See VEST, as to what extent the soil under, and air over, "streets", vest in local authorities; and if there be no such vesting, the soil is vested in the adjoining owners, and is not divested by general words in a Royal Grant (*Salt Union v Harvey*, 61 J.P. 375). See also *Escott v Newport* [1904] 2 K.B. 369, cited VEST. As to the damages recoverable for injury to a highway vested in a public authority (Public Health Act 1875, s.149), see *Wednesbury v Lodge Holes Colliery Co* [1907] 1 K.B. 78, reversed by House of Lords and judgment of Jelf J., restored nom. *Lodge Holes Colliery Co v Wednesbury* [1908] A.C. 323. An area which considered as a whole as a street is not prevented from being a street within s.150 by the fact that parts of it considered alone would themselves be "streets". Existing pavements on either side of a road are not "streets" (*Abel v Orpington UDC* (1963) 61 L.G.R. 546).

Although the definition of "street" in s.295(1) of the Highways Act 1959 (c.25) includes a highway, it is not a necessary constituent of a street that the public should have rights over it of the kind enjoyed over a highway. An undeveloped strip of land alongside the metalled road can be part of the "street" (*West End Lawn Tennis Club (Pinner) v Harrow Corp* (1965) 64 L.G.R. 35). Where developers retained a twelve foot wide strip between the houses they built and the street, granted rights of way across it and did not cultivate it, the strip was held to be part of the "street", since it was not used in connection with the occupation of the houses and formed no barrier between them and the street proper (*Warwickshire CC v Adkins* (1967) 203 E.G. 339). A road can be a "street" within the meaning of this section even though there are very few buildings along it (*Warwickshire CC v Atherstone Common Right Proprietors* (1964) 65 L.G.R. 439).

"Street or place" (London Hackney Carriage Act 1831 (c.22) s.35) meant a public street or place (*Case v Storey*, L.R. 4 Ex. 319). See also *Hunt v Morgan* [1949] 1 K.B. 233, cited PLACE. See PLACE; PLY.

A statement in particulars of sale that the property sold abutted on a named "street" was held not to import that the "street" was a public highway (*Barnes v Cadogan Developments Ltd* [1930] 1 Ch. 479).

"In a street" (Street Offences Act 1959 (c.57) s.1(1)): see *Smith v Hughes*, cited IN, para.(14).

"Street" (Control of Pollution Act 1947 (c.40) s.62(1)). A covered market has been held to be a "square" and therefore a "street" within the meaning of this section (*London Borough of Tower Hamlets v Creitzman* (1984) 83 L.G.R. 72).

"Street" (Town Police Clauses Act 1847 (c.89) s.38, as amended by Sch.3 to the Criminal Justice Act 1967 (c.80) and ss.39 and 46 of, and Sch.3 to, the Criminal Justice Act 1982 (c.48)). Land was not a "street" for the purposes of this section unless the public, including taxi drivers, had a legal right of access to it. Accordingly the taxi rank at Birmingham Airport on land owned by the airport authority and subject to its by-laws was not a "street" (*Young v Scampion* [1989] R.T.R. 95).

Stat. Def., Sexual Offences Act 1985 (c.44) s.4; Housing Act 1985 (c.68) s.622; Gas Act 1986 (c.44) Sch.4 para.6; New Roads and Street Works Act 1991 (c.22) s.48; Transport and Works Act 1992 (c.42) s.67.

For a quaint use of "street": see *Termes de la Ley*, *Stallage*, cited STALLAGE AND PACKAGE.

Street for "foot-traffic": see TRAFFIC; cp. FOOT-PATH.

As to what buildings "form", or "front to", or are "within", a street: see FORMING.

Land bounding a street, where a footway made: see BOUNDING.

As to implied grant of right of way, see ABUT.

Stat. Def., Public Health (Control of Diseases) Act 1984 (c.22) s.75; Road Traffic Regulation Act 1984 (c.27) s.6(6); Building Act 1984 (c.55) s.126.

See COMMENCEMENT; CONSTRUCTION; EXISTING; HIGHWAY; NEW STREET; PUBLIC HIGHWAY; SAME; SEWERED; TURNPIKE ROAD; VEST. See also CHANNEL; LANE; NAME; PART; PRIVATE STREET; PUBLIC STREET; REGULAR LINE OF STREET; SIDE STREET.

STREET LIGHTING. "System of street lighting" (Road Traffic Regulation Act 1967 (c.76) s.72(1)). There is no "system of street lighting", within the meaning of this section, on a road illuminated by lights whose primary purpose was to light a promenade near by (*Roberts v Croxford* (1969) 67 L.G.R. 408).

STREET REFUSE. See REFUSE.

Stat. Def., Public Health (London) Act 1936 (c.50) s.304(1).

STREET TRADING. In Employment of Children Act 1903 (c.45) s.13, "'street trading' includes the hawking of newspapers, matches, flowers, and other articles; playing, singing, or performing for profit; shoe-blackening; and any other like occupation carried on in streets or public places". A person might be engaged in street trading under s.2 of the Act although he was in the employment of another person. That section in conjunction with s.13, prohibited trading where the street was used as a market place but not legitimate business between a shop and customers at their own houses: see *Stratford Co-operative Society v East Ham Corp* [1915] 2 K.B. 70; *Morgan v Parr* [1921] 2 K.B. 379. Cp. now Education Act 1944 (c.31) s.59.

A street photographer was held not to be street trading in *Newman v Lipman* [1950] 2 All E.R. 832, but the contrary was held in *Machver v Robertson* (1950) S.L.T. 358. See also STATIONARY, para.(2).

(Pedlars Act 1871 (c.96) s.3.) It was not necessary to set up a pitch in order to be convicted of street trading (*Prentice v Normand* [1994] S.C.C.R. 55).

(London Local Authorities Act 1990 ss.21, 38.) Exposing goods for sale outside a shop which were to be paid for inside the shop amounted to street trading in London,

STREET

although such an activity was specifically excluded elsewhere under the Local Government (Miscellaneous Provisions) Act 1982 (*Wandsworth LBC v Rosenthal*, *The Times*, March 28, 1996).

A reference to “street trading” includes a case where a person sells through a hatch in a kiosk (*Tower Hamlets LBC v Sherwood* [2002] EWCA Civ 229).

Stat. Def., Children and Young Persons Act 1933 (c.12) s.30; London CC (General Powers) Act 1947 (c. xlv) s.15; Local Government (Miscellaneous Provisions) Act 1982 (c.30) Sch.4 para.1.

STREET WALKER. Is synonymous with night-walker in its meaning of “a woman walking the streets to pick up men” (*R. v Bootie*, 2 Burr. 864, 865).

STREET WORKS. A compulsory power to take land for “street works” is different from such a power to take land for a “street”; the ruling in *Galloway v London*, L.R. 1 H.L. 34, cited STREET, does not apply to a power to take land for “street works”, which only includes land necessary for the formation of a street, and not land on its side merely required for recoupment purposes (*Donaldson v South Shields*, 68 L.J. Ch. 102, 162). See WORKS.

Stat. Def., Town and Country Planning Act 1947 (c.51) s.49(6); New Streets Act 1951 (14 & 15 Geo. 6, c.40) s.10(1); Highways Act 1959 (c.25) s.213; Income and Corporation Taxes Act 1970 (c.10) s.57(12); Finance Act 1972 (c.41) Sch.9 para.9.

STRENGTH. “Mechanical strength” (Electricity Regulations 1908 (No.1312) reg.6), covers strength apart from the strength necessary to carry electric current, e.g. the strength necessary to resist such pull as a workman may be likely to want to exert in carrying out such a task as freeing a jammed cable (*Gatehouse v John Summers & Sons* [1953] 1 W.L.R. 742).

STRICT DUTY. Costs incurred by an executor who (to meet a possible charge of *devastavit*) separately defends an action brought jointly against residuary legatees and himself, are not “an outlay in the strict line of his duty” within the rule (Lewin (15th edn), 403), entitling him to reimbursement by his *cestui que trust* (*Hosegood v Pedlar*, 66 L.J.Q.B. 18).

See DUTY.

STRICT ENTAIL. “Where lands are directed to be settled on A and his heirs ‘in strict entail’, there seems little doubt that A ought to be made tenant for life only” (3 Jarm. (7th edn), 1838, citing *Graves v Hicks*, 5 L.J.K.B. 142; *Woolmore v Burrows*, 1 Sim. 526); and, as it should seem, “with remainder to his first and other sons successively in tail general, with remainder to his daughters as tenants in common in tail general, etc.” (Lewin (15th edn), 74, citing *Sealey v Stawell*, Ir. R. 9 Eq. 499).

See STRICT SETTLEMENT; CLOSELY ENTAILED; ENTAIL.

STRICT LIABILITY. “Strict liability rule”: Stat. Def., Contempt of Court Act 1981 (c.49) s.1.

“... we do not consider it helpful to an analysis of the sort of problem raised by this appeal to characterise an offence as one of ‘an offence of strict liability’ where the prosecution does not have to prove any sort of mens rea, but where there is a statutory provision for a defence or an evidential issue to be raised based on the presence or absence of some state of mind on the part of the defendant. Whether or not it is an appropriate description of such an offence, it is of no help, it seems to us, in considering whether and how much defence may be deployed in individual cases” (*R. v Nicholson* [2006] EWCA Crim 1518 at [18]).

STRICT SETTLEMENT. A strict settlement arises from a deed, will, agreement, etc. under which land is limited in trust by way of succession: see *Settled Land Act 1935* (c.18) s.1. For an example see *Ungarian v Lesnoff* [1990] Ch.206.

Where a will of personalty directed "the girls' shares to be settled on themselves strictly", Romilly M.R. held that the income of each share should, during the joint lives of one of the "girls" and her husband, be paid to her for her life, for her separate USE and without power of anticipation; and if she died first, her share to go as she should by will appoint, or, failing appointment, to her next of kin, but if she survived her husband, then her share to be for herself absolutely (*Loch v Bagley*, L.R. 4 Eq. 122).

See SETTLEMENT; STRICT ENTAIL.

STRIKE. "There is no authority which gives a legal definition of the word 'strike'; but I conceive the word means a refusal by the whole body of workmen to work for their employers, in consequence of either a refusal by the employers of the workmen's demand for an increase of wages, or of a refusal by the workmen to accept a diminution of wages when proposed by their employers" (per Kelly C.B., *King v Parker*, 34 L.T. 889), or, semble, such a refusal in consequence of any dispute between masters and men relating to the employment; in short, "a 'strike' is properly defined as a simultaneous cessation of work on the part of the workmen" (per Hannen J., *Farrer v Close*, L.R. 4 Q.B. 612). A general strike is illegal (*National Seamen's and Firemen's Union of Great Britain and Ireland v Reed* [1926] Ch. 536).

"Strike or other industrial action" (Trade Union and Labour Relations Act 1974 (c.52) Sch.1 para.8). Workmen who crowded round a newly installed machine for the purpose of preventing its proving operation taking place, and who refused to return to their places of work when ordered, were taking part in a "strike or other industrial action" (*Thompson v Eaton* [1976] I.C.R. 336).

An excuse for delay in fulfilling a contract on the ground of a "strike" by workmen means a strike against the employer; not a mere refusal to work because an infectious disease is prevalent, or the weather is hot or wet, or such like excuse (*Stephens v Harris*, 57 L.J.Q.B. 203; *Re Richardsons and Samuel*, 66 L.J.Q. 868, cited LOCK-OUT). See *Re Allison and Richards*, 20 T.L.R. 584, cited CONTROL; *Steel v Grand Canary Coaling Co*, 20 T.L.R. 542, cited STOPPAGE.

An exception as to lay days, in a charterparty, of "strikes of workmen", does not exonerate the charterers from liability for delay if, by any reasonable efforts, they can take delivery, even though there be a strike at the port of discharge (*Bulman v Fenwick* [1894] 1 Q.B. 179). Cp. *Dobell v Green* [1900] 1 Q.B. 526, cited AS ORDERED; DETENTION BY ICE; DETENTION BY RAILWAYS. See CUSTOMARY; *Saxon SS Co v Union SS Co*, 68 L.J.Q.B. 58, cited COLLIERY WORKING DAY; *Hick v Raymond* [1893] A.C. 22, and *Carlton SS Co v Castle Co* [1898] A.C. 490-492, cited REASONABLE; *Budgett v Binnington* [1891] 1 Q.B. 35, cited DEMURRAGE. See hereon *Hoyle v Oldham* [1894] 2 Q.B. 372; *Allen v Flood* [1898] A.C. 1, cited MALICE.

A concerted agreement by a crew refusing to sail on the ground that they would be exposed to the danger of being sunk by German war vessels is a "strike" within a term in a charterparty: see *Williams Bros Ltd v Naamlooze Vennootschap Berghuys Kolenhandel*, 86 L.J.K.B. 334.

The concerted refusal by workmen to work on a customary 24-hour shift basis, so as to get improvements in terms and conditions of work, was held to be a "strike" within

the meaning of an exception clause in a charterparty, even where it was discontinuous and not in breach of contract (*Tramp Shipping Corp v Greenwich Marine Incorporate* [1975] I.C.R. 261).

“Taking part in a strike”: see *Smith v Wood*, 43 T.L.R. 179.

Stat. Def., Employment Protection (Consolidation) Act 1978 (c.44) Sch.13(24); Trade Union Act 1984 (c.49) s.11; Employment Act 1988 (c.19) s.1; Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) s.246; Employment Rights Act 1996 (c.18) s.235(4).

See BOYCOTT; INTIMIDATE; LAWFUL PURPOSE; SUDDEN; TRADE UNION.

STRIP (IN RELATION TO STOCK OR BOND). Stat. Def., Income Tax (Trading and Other Income) Act 2005 (c.5) s.444.

STROKEHALL. Stat. Def., Salmon and Freshwater Fisheries Act 1923 (13 & 14 Geo. 5, c.16) s.1(3).

Cp. FIXED ENGINE.

STRONG. See TIGHT.

“With strong hand”: see FORCE.

“Strong presumption”: see PRESUMPTION.

STRUCTURAL ALTERATION. “Structural additions to . . . buildings” (Settled Land Act 1925 (c.18) Sch.III Pt II para.(v)) were held to include a range of buildings, consisting of glasshouses, garages, a chauffeur’s flat, engine-room, battery-room, boiler-house, workshop and potting shed built by a tenant for life about 30 to 50 feet behind the principal house, and with it, forming one domestic unit (*Re Insole’s Settled Estate* [1938] Ch. 812).

As to “structural alteration” within s.72, Licensing Act 1910 (c.24), see *Smith v Portsmouth Justices* [1906] 2 K.B. 229, cited ALTERATION; *Marshall v Spicer*, 103 L.T. 902.

“Structural alterations” (Building (Safety, Health and Welfare) Regulations 1948 (No.1145) reg.2) include the installation of a lavatory, washbasins and piping in a building (*O’Haire v Robert Rowe and Son Ltd* (1961) S.L.T. (Notes) 18).

“Structural alteration” (Housing Act 1974 (c.44) Sch.8 para.1(2)). The installation of a central heating system amounted to a “structural alteration” and therefore an “improvement” within the meaning of this paragraph (*Pearlman v Keepers and Governors of Harrow School* [1979] Q.B. 56).

STRUCTURAL CONVENIENCE. “Want of structural convenience” (Public Health Act 1875 (c.55) s.94; but cp. Public Health Act 1936 (c.49) s.93): see *Kinson Co v Poole* [1899] 2 Q.B. 41, on which see *Wilkinson v Landoff* [1903] 2 Ch. 695, and *Wincanton v Parsons* [1905] 2 K.B. 34, cited SEWER. There is no nuisance attributable to want of, or defect in, a “structural convenience”, if it arises from the want of proper cleansing (*Barnett v Laskey*, 68 L.J.Q.B. 57, cited CLEANSE).

STRUCTURAL DIVISION. See SEPARATE OCCUPATION; HOUSE.

STRUCTURAL EXPENSES. See EXPENSES.

STRUCTURAL REPAIRS. For a consideration of the meaning of the words “structural repair” in the clause of a lease, see *Granada Theatres v Freehold Investment (Leytonstone)* [1959] Ch. 592.

STRUCTURALLY. “Structurally deficient”, “structurally unsuitable”: see *R. v Dodds* [1905] 2 K.B. 40, cited RENEWAL.

“Structurally detached” (Leasehold Reform Act 1967 (c.88) s.2(2)) must be construed as meaning “detached from any other structure”. So that premises which

extend over a lock-up garage let to a neighbour are not structurally detached from it (*Parsons v Viscount Gage* [1974] 1 W.L.R. 435).

STRUCTURE. In its ordinary sense, means something which is constructed in the way of being built up as is a building (*South Wales Aluminium Co v Neath Assessment Committee* [1943] 2 All E.R. 487).

Although the question what is a structure is a question of fact, the question what is a structure within the meaning of a particular statute or regulation is a mixed question of law and fact (*Hobday v Nicol*, 113 L.J.K.B. 264).

An advertising sign of sheet metal nailed to the outside of a frame which was put on a wall did not constitute "a wooden or other structure or erection", within s.18(1) of the Manchester Corporation Act 1891 (c. ccvii) (*Borough Billposting Co v Manchester Corp* [1948] 1 All E.R. 807).

A model railway and a model building are either a "structure" or an "erection" within s.119(1) of the Town and Country Planning Act 1947 (c.51) (*Buckinghamshire CC v Callingham* [1952] 2 Q.B. 515).

"Buildings or structures or in the nature of buildings or structures" (Plant and Machinery (Valuation for Rating) Order 1927 (No.480) Schedule Class 4); tilting furnaces and mains are within the phrase (*Cardiff Rating Authority v Guest, Keen, Baldwins Iron and Steel Co* [1949] 1 K.B. 385); so are rotating cylinders with their supporting rollers (*British Portland Cement Manufacturers v Thurrock Urban DC*, 66 T.L.R. (Pt 2) 1003); and baking ovens (*Burton v Ogdens (Brighton)*, 45 R. & I.T. 470). "It is, I think, characteristic of a structure that it is built up of component parts on the site. But a thing may be in the nature of a structure, even though it is not built up on the site, but is brought there all in one piece" (per Denning L.J., *BP Refinery (Kent) v Walker*).

The words "a structure which is of a kind similar to structures such as referred to in paragraph (a), paragraph (b) or paragraph (c) of this section" (Rating and Valuation (Miscellaneous Provisions) Act 1955 (c.9) s.9(1)(d) now General Rate Act 1967 (c.9) s.45) mean a "structure" the purposes or adaptability or use which are similar to those referred to in paragraphs (a), (b) and (c) of the section (*Jewish Blind Society Trustees v Henning* [1961] 1 W.L.R. 24). The word "structure" in s.9(1)(c), exempting from rating structures used for welfare arrangements for the handicapped, embraces every type of building and is not limited to mere adjuncts or annexes to the principal building on the hereditament (*Almond v Birmingham Corp* [1968] A.C. 37).

"Structure or erection" (Town and Country Planning (Control of Advertisements) Regulations 1969 (SI 1969/1532) reg.2) includes the canopy over the petrol pumps on a garage forecourt (*Heron v Coupe* [1973] 1 W.L.R. 502).

"Alteration of structure": see *Somerville v Dick*, 39 Sc. L.R. 836, cited ALTERATION. Cp. *Whyte v Bruce*, 37 Sc. L.R. 617, cited ERECT.

"Structure" (Engineering Construction (Extension of Definition) Regulations 1960 (SI 1960/421) reg.3) can include a crane, whether mobile or not, and whether or not it also constitutes plant (*British Transport Docks Board v Williams* [1970] 1 W.L.R. 652).

The words "structure and exterior of the dwelling-house" in the Housing Act 1961 (c.65) s.32(1) were not to be construed as extending to a yard at the rear of a house not providing the main access thereto (*Hopwood v Cannock Chase DC* [1975] 1 W.L.R. 373). But the roof above the top floor flat is capable of being part of the "structure and

exterior" of the dwelling comprising the flat within the meaning of this section (*Douglas-Scott v Scorgie* [1984] 1 All E.R. 1086).

"Structure" (Highways Act 1980 (c.66) s.143). A caravan if deposited on the highway verge for a considerable period of time could be a "structure" within the meaning of this section (*R. v Welwyn Hatfield DC, Ex p. Brinkley* [1983] J.P.L. 378).

"Structure" (Control of Pollution (Licensing of Waste Disposal) Regulations 1976 (SI 1976/732)). A landscaped river garden, which incorporated substantial amounts of land fill, and which involved the reinforcement and building up of the river bank, was capable of being a structure within the meaning of reg.4(1)(a) of these Regulations (*Oxfordshire CC v Millsom, The Times*, April 24, 1985).

A caravan used for the storage and mixing of cattle food was not a "structure" for the purposes of the Town and Country Planning Acts (*Wealden DC v Secretary of State for the Environment* (1988) 56 P. & C.R. 286).

"The structure . . . of the dwelling-house" (Landlord and Tenant Act 1985 (c.70) s.11(1)(a)). The plaster on the walls can be part of the "structure" for the purposes of this section (*Staves and Staves v Leeds City Council* (1990) 23 H.L.R. 95). The "structure" in this sentence consists of those elements which give it its essential appearance, stability and shape; it is not limited to those parts of the dwelling-house which are load-bearing, but any particular part must be a material or significant element in the overall construction (*Irvine v Moran* (1991) 24 H.L.R. 1).

"Structure fixed to a building" (Town and Country Planning Act 1971 (c.78) s.54(9)). "Structure" in this section is limited to such structures as are ancillary to the building itself, and is not intended to cover some other complete building in its own right, such as, as in this case, one connected by a bridge and a tunnel (*Debenhams v Westminster City Council* [1986] 3 W.L.R. 1063).

"Structure . . . forming part of the land and comprised within the curtilage of a building" (Town and Country Planning Act 1971 (c.78) s.54(9)). A ha-ha was held to be such a structure (*Watson-Smyth v Secretary of State for the Environment and Cherwell DC* (1991) 64 P.&C.R. 156).

"No fresh structures": see CARAVAN.

For decisions as to what can be considered as "plant" as opposed to "structure" in the rating and revenue statutes, see PLANT.

Stat. Def., London Building Act (Amendment) Act 1935 (c. xcii) s.4(4); General Rate Act 1967 (c.9) s.28(5); Highways Act 1980 (c.66) ss.143(4), 291(4).

"Structure or erection": Stat. Def., Health and Safety at Work Act 1974 (c.37) s.74. Building Act 1984 (c.55) s.121.

"For myself, whilst I would accept and adopt Mr Recorder Thayne Forbes's observations as to the meaning of 'the structure . . . of the dwellinghouse' as providing for present purposes, as Neuberger LJ put it, a good working definition, I am respectfully unconvinced by his holding that the plaster finish to an internal wall or ceiling is to be regarded as in the nature of a decorative finish rather than as forming part of the 'structure'. In the days when lath and plaster ceiling and internal partition walls were more common than now, the plaster was, I should have thought, an essential part of the creation and shaping of the ceiling or partition wall, which serve to give a dwellinghouse its essential appearance and shape. I would also regard plasterwork generally, including that applied to external walls, as being ordinarily in the nature of a smooth constructional finish to walls and ceilings, to which the decoration can then be applied, rather than a decorative finish in itself. I would

therefore hold that it is part of the 'structure'. I would accordingly accept that the wall and ceiling plaster in Ms Grand's flat formed part of the 'structure' of the flat for the repair of which Mr Gill was responsible." (*Grand v Gill* [2011] EWCA Civ 554.)

See BUILDINGS; ERECTION.

STRUCTURED SETTLEMENT. Stat. Def., Damages Act 1996 (c.48) s.5.

STUBBLE. See STRAW.

STUDENT. (Income Support (General) Regulations 1987 reg.61.) For the purposes of reg.61 of the 1987 Regulations, a "student" had to attend a full-time course from the time of enrolment through such terms as were periods of terms or vacation within it (*Chief Education Officer v Webber* [1997] 4 All E.R. 274).

STUDENTS' UNION. Stat. Def., "any association of students formed to further the educational purposes of the institution and the interests of students, as students" (Leeds City College (Government) Regulations 2008 (SI 2008/3084) reg.1).

STUDY. "Study . . . evaluation . . . jobs" (Equal Pay Act 1970 (c.41) s.1(5)). To be effective the "study" had to analyse the various factors necessary for the effective performance of the job, and then compare the result with other similar jobs performed by other workers (*Bromley v Quick (H. & J.)* [1988] I.R.L.R. 249).

STUFF. See HOUSEHOLD.

STURDY BEGGAR. See VAGABOND.

STURGES-BOURNE'S ACTS. Vestries Act 1818 (c.69).

Poor Relief Act 1819 (59 Geo. 3, c.12).

SUB-CONTRACTOR. See CONTRACTOR.

SUB-FREIGHT. "Lien on sub-freights": see *Tagart v Fisher* [1903] 1 K.B. 391.

SUB JUDICE. For a definition of matters which are *sub judice* for the purposes of the House of Lords rules prohibiting debate of matters *sub judice* see the Resolution of the House of Lords recorded in Hansard for Thursday May 11, 2000.

As to the new definition of the notion of matters *sub judice* for the purpose of restrictions on debate in the House of Commons, see the resolution of the Commons and its supporting debate in Hansard for November 15, 2001, cols.1012–20.

SUB-MORTGAGE. See LEGAL SUB-MORTGAGE.

SUBINFEUDATION. Subinfeudation was a grant by an inferior feudatory lord of a part of his land to be held by feudal services as of himself, and not as of the lord paramount (2 Bl. Com. 91). The practice was finally stopped by the statute *Quia emptores*, 18 Edw. 1, c.1. See *Holliday* [1922] 2 Ch. 698, in which the whole question of subinfeudation was discussed.

SUBJACENT. See ADJACENT.

Subjacent minerals: see SURFACE; *Fletcher v Lancashire & Yorkshire Railway* [1902] 1 Ch. 909; *Re Bwlifa, etc. Collieries and Pontypridd Waterworks Co* [1901] 2 K.B. 805, and *Richard v Great Western Railway* [1905] 1 K.B. 68, cited POSSESSION; *Great Northern Railway v Inland Revenue Commissioners* [1899] 2 Q.B. 652, cited RELEASE.

SUBJECT. Notwithstanding his dispossession by the Commonwealth, and even during its days, Charles the Second was King of England, and the people of England were his "subjects", within 34 & 35 Hen. 8, c. 20 (*Robinson v Giffard* [1903] 1 Ch. 865, cited SERVICE).

SUBJECT

The fact that a person was born in a British colony did not make him a "subject" of that colony so as to make a judgment recovered against him, in his absence, in the colonial court, enforceable in this country: see *Gavin, Gibson & Co Ltd v Gibson* [1913] 3 K.B. 379.

Stat. Def., "a person not acting on behalf of the Crown" (Scotland Act 1998 (c.46) s.99(5)).

See BRITISH SUBJECT; LIBERTY OF THE SUBJECT; ORIGINAL SUBJECT.

SUBJECT AS AFORESAID. As to the effect of this phrase on a residuary devise or bequest, see *Booth v Coulton*, 5 Ch. 684; *Re Boden* [1907] 1 Ch. 132, cited CONTINUING CHARGE. This phrase will often create a charge; see *Re Wilkinson* [1910] 2 A.C. 216, cited GENERAL POWER; *Re Howarth* [1909] 2 Ch. 19, cited SUBJECT TO. See also SUBJECT TO.

See *R. v Local Government Board*, 15 Q.B.D. 70.

SUBJECT AS HEREAFTER PROVIDED. Finance (No.2) Act 1939 (c.109) s.12: this meant "as hereafter provided in the relevant part of the Act and not in that particular section" (*English Sewing Cotton Co Ltd v Inland Revenue Commissioners* [1947] 1 All E.R. 679).

SUBJECT-MATTER. The "subject-matter", as regards the county court scales of costs, is, in an interpleader action, the value of the whole goods claimed, and (if any) the damages (*Studham v Stanbridge* [1895] 1 Q.B. 870).

"Subject-matter of the dispute" (Legal Aid and Advice Act 1949 (c.51) s.4(3) and Legal Aid (Assessment of Resources) Regulations 1950 (No.1358) reg.2) has been held not to include alimony *pendente lite* (*Taylor v National Assistance Board* [1958] A.C. 532).

"Subject-matter insured" (Marine Insurance Act 1906 (c.41) s.60(1)): see *Sanday & Co v British & Foreign Marine Insurance Co* [1916] A.C. 650, cited RESTRAINTS OF KINGS; see also *Dunlop Bros & Co v Townend* [1919] 2 K.B. 127.

SUBJECT THERETO. "The ordinary and grammatical construction of 'and subject thereto' is that it refers to the immediate antecedent in the same sentence" (per Lord Wensleydale, *Gray v Golding*, 2 L.T. 198).

See SUBJECT TO.

SUBJECT TO. Testamentary gifts "subject to":

- (a) gifts "for" and "subject to" a particular purpose: see *King v Denison*, 1 V. & B. 272 and *Abrams v Winship*, 3 Russ. 350;
- (b) land devised "subject to" a payment: see *Re Lester* [1942] Ch. 324;
- (c) land devised "subject to" a mortgage or charge: see *Re Mainwaring* [1937] Ch. 96;
- (d) a bequest "subject to" payment of debts: see *Mellish v Vallins*, 31 L.J. Ch. 592;
- (e) "subject to" the provisions in a will: see *Re Sullivan* [1930] 1 Ch.84;
- (f) "subject to" the provisions contained in the previous clause: see *Re Edwards Will Trusts* [1948] Ch. 440.

Lease:

- (a) "subject to" rent and covenants: see *Wolveridge v Steward*, 3 L.J. Ex. 360;
- (b) "subject to" lease: see *Davenport v Smith*, 91 L.J. Ch. 225.

Settled Land Act 1925 (c.18) s.20(1) "subject to" an immediate trust for sale. See *Re Leigh's Settled Estates* [1926] 1 Ch. 852.

Commercial contracts:

- (a) “subject to” contract: generally such words prevent the creation of a binding agreement (*Munton v Greater London Council* [1976] 1 W.L.R. 649 but see also *Richard (Michael) Properties Ltd v Corporation of Wardens of St. Saviours Parish, Southwark* [1975] 3 All E.R. 416 and *Cohen v Nessdale* [1982] 2 All E.R. 97);
- (b) “subject to” safe arrival: see *Barnett v Javeri & Co* [1916] 2 K.B. 390;
- (c) “subject to” force majeure: see *Lebeaupin v Richard Crispin & Co* [1920] 2 K.B. 714 and *Hong and Guan & Co v Jumabhoy (R.) & Sons* [1960] A.C. 684;
- (d) “subject to” the same conditions as the original policy: see *Norwich Union Fire Insurance Society v Colonial Mutual Fire Insurance Co*, 91 L.J.K.B. 881; and
- (e) “subject to” details/logical amendments is a well known term in a bill of lading and logical amendment should be treated as illustrative and/or supplemental rather than restrictive in intention (*CPC Consolidated Pool Carriers GmbH v CTM CIA Transmediterranea SA* [1994] 1 Lloyd’s Rep. 68).

Sale of land:

- (a) “subject to” contract: see *Tiverton Estates v Wearwell, The Times*, November 21, 1973 and *Alpenstow Ltd v Regalian Properties* [1985] 1 W.L.R. 721 (and note that there is no reason to suppose that “subject to contract” has a recognised meaning within the music industry different to that which it bears in ordinary legal usage) (*Confetti Records (a Firm) v Warner Music UK Ltd (trading as East West records)* T.L.R., June 12, 2003, Ch);
- (b) “subject to” survey: see *Ee v Kakar* (1979) 40 P. & C.R. 223; and
- (c) “subject to” a satisfactory mortgage: see *Lee-Parker v Izzet (No.2)* [1972] 1 W.L.R. 775.

SUBJECT TO CONTRACT. “In our judgment it is important not to over-emphasise the actual phrase ‘subject to contract’. It is a question, in every case where a written agreement is contemplated, whether the parties intend not to be bound until the relevant document is actually signed or merely intend that the relevant document is to be the record of an agreement made orally and intended to be binding when made.” (*Investec Bank (UK) Ltd v Zulman* [2010] EWCA Civ 536.)

SUBJECTION. “The subjection of goods and materials to any process” (Income Tax Act 1952 (c.10) s.271(1) (c), Capital Allowances Act 1968 (c.3) s.7(1)(e)) was held not to include the cremation of human remains (*Bounce v Norwich Crematorium* [1967] 1 W.L.R. 691).

SUBJECTIVE DEVALUATION. See *Benedetti v Sawiris* [2013] UKSC 50.

SUBJECTIVE INTENTION. “The expression ‘subjective intention’ is often used to mean the private intention of one party, which may or may not be the same as that of the other and may or may not have been communicated to him.” (*Svenska Petroleum Exploration AB v Lithuania* [2006] EWCA Civ 1529 at [24].)

See also INTENTION.

SUBJECTIVE OVER-VALUATION. See *Benedetti v Sawiris* [2013] UKSC 50.

SUBJECTIVE VALUE. For a discussion of the concepts of “subjective value” and “true value” as relevant for fiscal purposes to transactions in second-hand cars, see *Lex Service Plc v Customs and Excise Commissioners* [2004] 1 W.L.R. 1, HL.

SUB-LEASE. See UNDERLEASE; LEASE. See also *Gray v Bonsall* [1904] 1 K.B. 601, cited LEASE.

SUB-LESSEE. See *Keith v Twentieth Century Club*, 73 L.J. Ch. 549, cited FRIEND.

SUB-LET. Increase of Rent and Mortgage Interest Restrictions (Continuance) Act 1923 (c.7) s.2: see *Doulin v Parcell*, 43 T.L.R. 140. See also ASSIGN.

A covenant against sub-letting does not cover sub-letting of part of the premises (*Cook v Shoesmith* [1951] 1 K.B. 752).

A covenant not to sub-let the premises demised is not broken by sub-letting only a part of them (*Esdaile v Lewis* [1956] 1 W.L.R. 709).

Stat. Def., Housing Finance Act 1972 (c.47) s.26.

SUBMIT TO. "Interruption . . . submitted to" (Prescription Act 1832 (c.71) s.4: see *Davies v Du Paver* [1952] 2 T.L.R. 890.

"Submitted to the jurisdiction" (Foreign Judgments (Reciprocal Enforcement) Act 1933 (c.13) s.4(2)(a)(i)). A French company with branches in Paris and Lille sold goods from both branches to a company in England. The invoices provided that disputes should be referred to courts in either Paris or Lille according to the branch involved. The French company claimed payment for goods from both branches. The English company requested that the disputes be brought before the Lille court, and in doing so "submitted to the jurisdiction" of that court for the purposes of this action (*SA Consortium General Textiles v Sun and Sand Agencies* [1978] Q.B. 279).

"Submit to the jurisdiction" (Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 art.18). Neither the acknowledgment of service of a writ nor an application to stay an action could amount to a submission to the jurisdiction for the purposes of this Convention (*The Sydney Express* [1988] 2 Lloyd's Rep. 257).

See ACQUIESCENCE; CONSENT; STANDING BY.

SUBORDINATE. One who is "subordinate" to another is in the same relationship to third parties as that other; therefore, a resident engineer, who is "subordinate" to a chief engineer, is no more an agent of the contractor or contractee (e.g. for building works), than is the chief engineer (*Re Rio Flour Mills and De Morgan*, 8 T.L.R. 108, 292).

Subordinate occupation: see per Lord Davey, in *Holywell v Halkyn Drainage Co* [1895] A.C. 117, cited EXCLUSIVE OCCUPATION.

"Subordinate company": Stat. Def., Insurance Companies Act 1982 (c.50) s.31(4).

"Subordinate instrument": Stat. Def., Decimal Currency Act 1969 (c.19) s.16.

"Subordinate interest": Stat. Def., Finance Act 1972 (c.41) s.69(4).

SUBORDINATE LEGISLATION. The definition of "subordinate legislation" in s.21(1) of the Human Rights Act 1998 covered the Rules of the Royal Society for the Prevention of Cruelty to Animals, being rules made under a private Act of 1932 (c. xxxix) (*RSPCA v Att-Gen* [2002] 1 W.L.R. 448, Ch).

Stat. Def., Human Rights Act 1998 (c.42) s.21(1).

SUBORNATION OF PERJURY. "Subornation of perjury is procuring a person to commit a perjury, which he actually commits in consequence of such procurement" (STEPH. CR. (9TH EDN), 147). See PERJURY.

SUB-PURCHASER. Within the meaning of its prospectus, a company "generally speaking, is not a 'sub-purchaser' for the purposes of Companies Act 1929 (c.23), Sch.IV, Pt 1(8) (see Companies Act 1948 (c.38), Sch.IV, Pt 1(9)(b)), unless it has to pay purchase-money (of course, including in that debentures and shares) to someone other than its own vendor, e.g. the vendor or person from whom such immediate vendor purchased" (per Joyce J., *Brookes v Hansen* [1906] 2 Ch. 129).

SUBROGATION. “‘Subrogation’ is the substitution of another person in the place of a creditor to whose rights he succeeds in relation to the debt. Personal subrogation is of two sorts, (1) conventional, and (2) legal. The difference between them in regard to the effects of subrogation in general results only from the modifications of rights which are constituted by express agreement. Subrogation differs from delegation in this respect, that it is the substitution of a new creditor; whereas delegation introduces a new debtor in the place of the former, who is discharged. Subrogation differs from a transfer or assignment of a debt, and from delegation, in the circumstance that it does not, necessarily, depend upon the creditor, but may be made independently of him. It is, properly speaking, but a fictitious cession made to one who has a right to offer payment; it is not a true cession nor sale of a debt, but such as is conceded by law and may have effect by operation of law and the act of the debtor, even without the consent of the creditor from whom the debt proceeds” (Dixon on Subrogation, 1).

See hereon Pothier on Obligations, by Evans, 160, cited *Commercial Union Assurance v Lister*, 9 Ch. 485; per Selborne C., *Blackburn Building Society v Cunliffe*, 22 Ch. D. 70, 71; cited by Chitty J., *Neath Building Society v Luce*, 43 Ch. D. 164; *Bannatyne v MacIver* [1906] 1 K.B. 103; *Re Wrexham, etc. Railway* [1899] 1 Ch. 440; *Re British Power Co*, 54 S.J. 749. For an example, see *Re Kensington*, 29 Ch. D. 527. See also *King v Victoria Insurance* [1896] A.C. 250; *Ecclesiastical Commissioners v Pinney* [1900] 2 Ch. 736; *Re Denton* [1904] 2 Ch. 178, applying *Craythorne v Swinburne*, 14. Ves. 160; *Pheonix Assurance Co v Spooner* [1905] 2 K.B. 753.

“If I desired to find an explanation of the meaning of the word ‘subrogation’ I do not think that I could do better than read the words in Workmen’s Compensation Act 1906 (c.58) s.5” (per Farwell L.J., *King v Pheonix Assurance* [1910] 2 K.B. 666; *Pailin v Northern Employers, etc. Co* [1925] 2 K.B. 73).

As to subrogation where a person pays off a mortgage intending to take a fresh security, which intention is thwarted, see *Patten v Bond*, 60 L.T. 583; *Chetwynd v Allen* [1899] 1 Ch. 393, cited MERGER; *Butler v Rice* [1910] 2 Ch. 277.

As to creditors’ right to be subrogated to the right of trustees to be indemnified out of the trust estate when the latter (being duly authorised) have carried on a business, see *Re Frith* [1902] 1 Ch. 342, applying *Re Johnson*, 15 Ch. D. 548, and *Dowse v Gorton* [1891] A.C. 190.

Insurer’s right of subrogation: see Marine Insurance Act 1906 (c.41) s.79. See hereon *Edward & Co v Motor Insurance Co* [1922] 2 K.B. 249.

Cp. NOVATION.

“In *Orakpo v Manson Investments Ltd* [1978] AC 95, 104, Lord Diplock explained that there were ‘some circumstances in which the remedy [for unjust enrichment] takes the form of “subrogation”, but this expression embraces more than a single concept in English law’. He went on to describe subrogation as ‘a convenient way of describing a transfer of rights from one person to another, without assignment or assent of the person from whom the rights are transferred and which takes place by operation of law in a whole variety of widely different circumstances’.” (*Bank of Cyprus UK Ltd v Menelaou* [2015] UKSC 66.)

SUBSCRIBE. “‘Subscribe’ means to write under something”, in accordance with prescribed regulations where any such exist (per Brett M.R., *Att-Gen v Bradlaugh*, 14 Q.B.D. 667; see also *Coon v Rigden*, 4 Colorado, 282). But though this is the strict

SUBSCRIBER

primary meaning of the word, it may sometimes, e.g. in the attestation of a will, be construed as "to give assent to, or to attest" or "written upon" (*Roberts v Phillips*, 24 L.J.Q.B. 171; *Re Streatley* [1891] P. 172).

An inventory was sufficiently "subscribed" by a lodger, within Lodgers' Goods Protection Act 1871 (c.79) s.1, if it was referred to in the annexed declaration which latter was signed by the lodger (*Godlonton v Fulham & Hampstead Property Co* [1905] 1 K.B. 431, followed in *Lowe v Dorling* [1906] 2 K.B. 772, cited *ILLEGAL DISTRESS*; *Rogers & Co v Martin* [1911] 1 K.B. 19).

"Subscription is a method of signing; it is not the only method"; a stamped, or other mechanical impression of a signature is good, in the case of electioneering papers, "but I take it to be perfectly clear that such a signature should not (in Scotland) be sufficient to satisfy the conditions of the statute regulating the subscription and attestation of probative deeds" (per Lord Kinnear, *Whyte v Watt*, 31 Sc. L.R. 127). Cp. SIGNED. As to the exigency of a Scottish subscription, see *Re Rattray*, 23 Sc. L.R. 889.

"Subscribe" very frequently means to pay money; and then it means (1) to have made an actual payment, or (2) to agree to contribute (*Thames Tunnel Co v Sheldon*, 6 B. & C. 341).

"Subscription" (Companies Act 1948 (c.38) s.455(1)) means taking or agreeing to take shares for cash, and it imports that the person agreeing to take the shares puts himself under a liability to pay the nominal amount thereof in cash. It is defined as "a promise over one's signature to pay a sum of money for shares in an undertaking" (*Government Stock and other Securities Investment Co v Christopher* [1956] 1 W.L.R. 237).

An obligation to "subscribe for" shares does not, as a general rule, connote that they must be taken personally; the obligation will be satisfied if the obligor procures an allotment of the agreed number of shares to persons approved by the directors of the company (*Re London & Colonial Finance Corporation*, 77 L.T. 146). See also UNDERWRITE.

A statement in a prospectus of a company that share capital has been "subscribed" is not satisfied by the fact that fully-paid-up shares have been allotted in payment for property or services (*Arnison v Smith*, 41 Ch. D. 348). But where, in a circular inviting subscriptions for shares in a private company, it is stated that a proportion of the capital has already been "subscribed", the word "subscribed" does not necessarily mean subscribed in cash (*Akerhielm v De Mare* [1959] A.C. 789).

"Subscribe" to an undertaking (Companies Clauses Consolidation Act 1845 (c.16) s.8): see *Burke v Lechmere*, L.R. 6 Q.B. 297.

"Attest and subscribe" a will: see ATTEST, para.(5).

See SIGNED.

SUBSCRIBER. See SHAREHOLDER.

"Subscriber" (Joint Stock Companies Registration Act 1844 (s.3): see *Ex p. Cookney*, 28 L.J. Ch. 12. See also Companies Act 1948 (c.38) s.26.

A right of voting, e.g. for a schoolmaster, given to "subscribers" is exercisable only by bona fide subscribers, not by those who come with their money *pro hac vice* (*Nott v Williams*, 48 W.R. 316).

SUBSCRIPTION OR CONTRIBUTION. A "subscription or contribution" for any plate, prize, or sum of money, to be awarded to the winner "of any lawful game, sport, pastime, or exercise" was excepted from the operation of the Gaming Act 1845 (c.109) s.18, proviso, and was legal and irrevocable. But to be within that proviso the

“subscription or contribution” must not itself have been a wager; and therefore if each of two or more persons staked money to form a fund for which they were to compete in a lawful game, e.g. a foot-race, that was a wager, and not a “subscription or contribution” within the proviso (*Diggle v Higgs*, 2 Ex. D. 422; overruling *Batty v Marriott*, 17 L.J.C.P. 215; see also *Trimble v Hill*, 5 App. Cas. 342). So, if two men, each owning a horse, agreed to ride a race each on his own horse and the winner to have both horses, that was not a “subscription or contribution” (*Coombes v Dibble*, L.R. 1 Ex. 248).

So, if two or more persons played at a lawful game for money, but did not at the time stake the money, that was not a “subscription”, but a mere bet upon which no action would lie (*Parsons v Alexander*, 24 L.J.Q.B. 277). So, the common “sweep” on a horse-race was not within the above exception, but was a lottery and illegal (*Allport v Nutt*, 1 C.B. 989; *Gatty v Field*, 9 Q.B. 431). See also *Hardwick v Lane* [1904] 1 K.B. 204.

See GAMING CONTRACT; VOLUNTARY CONTRIBUTIONS; LOTTERY.

SUBSEQUENT ACTION. A second action commenced after the issue of the writ but before judgment obtained in a first action, was held to be a “subsequent” action within Married Women’s Property Act 1874 (c.50) ss.2, 5 (*Fear v Castle*, 8 Q.B.D. 380).

A “subsequent action for infringement” of a patent which will carry cost as between solicitor and client (Patents, Designs and Trade Marks Act 1883 (c.57) s.31; see Patents Act 1949 (c.87) s.64) means an action about the same patent commenced after one in which the court or judge has, under the section, certified the validity of the patent (*Automatic Weighing Machine Co v International Hygienic Society*, 6 Pat. Ca. 475; *Saccharin Corp v Anglo-Continental Co* [1900] W.N. 95).

See ACTION.

SUBSEQUENT ASSIGNMENT. “Subsequent” (Fine Arts Copyright Act 1862 (c.68) s.4) meant subsequent to the first entry, therefore it was not necessary, under that section, to register the assignment of a copyright to the person who first made the entry of it (*Troitzsch v Rees*, 3 T.L.R. 773; see also *Ex p. Walker*; *Re Graves*, L.R. 4 Q.B. 715).

See ASSIGNMENT.

SUBSEQUENT CONDITION. See CONDITION.

SUBSEQUENT OFFENCE. By Summary Jurisdiction Act 1848 (c.43) s.25, justices had power to impose a second sentence for a “subsequent offence”; it was held that two charges could be heard consecutively at the same sittings and if the accused were found guilty of both, that he could be sentenced for the first, and that the second could be treated as the trial for a subsequent offence for which he might, at the same sittings, have a second sentence (*R. v Cutbush*, L.R. 2 Q.B. 379); but that case was doubted by *R. v Martin*, *The Times*, May 18, 1911, and the court refused to extend its ruling to a third sentence.

Criminal Law Act 1827 (c.28) s.10: meant subsequent conviction for offence (*R. v Greenberg* [1943] K.B. 381).

(Food and Drugs Act 1938 (c.56) s.79.) See *British Doughnut Co v Dale* [1944] K.B. 228; *Concentrated Foods v Champ* [1944] K.B. 342 (meant an offence under the same section as was applicable to the previous offence).

SUBSIDENCE. As to what is damage by subsidence, see *West Leigh Colliery Co v Tunnicliffe & Hampson Ltd* [1908] A.C. 27, in which case the House of Lords reversed

SUBSIDIARY

CA [1906] 2 Ch. 22, and restored judgment of *Swinfen Eady J.* [1905] 2 Ch. 390; *New Moss Colliery Co v Manchester* [1908] A.C. 117; *Lodge Holes Colliery Co v Wednesbury* [1907] 1 K.B. 78, cited STREET; see also SURFACE.

Means sinking, that is to say movement in a vertical direction as opposed to “settlement”, which means movement in a lateral direction (*Allen (David) & Sons Billposting v Drysdale* [1939] 4 All E.R. 113.).

“Subsidence damage”: Stat. Def., Coal-Mining (Subsidence) Act 1950 (c.23) s.17(1).

See CAUSE OF ACTION.

SUBSIDIARY. “Subsidiary company” (Finance Act 1922 (c.17) s.21; Finance Act 1927 (c.10) s.31(3); Income Tax Act 1952 (c.10) s.256(1)); see *Barrowford Holdings v Inland Revenue Commissioners* [1940] 1 K.B. 81 (a company is not a “subsidiary company” merely because it is controlled by a foreign company). See also *IRC v Harton Coal Co* [1960] Ch. 563; *CHW (Huddersfield) v IRC* [1963] 1 W.L.R. 767.

“The granting of perpetual annuities is not borrowing, and is not a purpose subsidiary to the general objects of a commercial or trading undertaking” (per Buckley J., *Re Southern Brazilian Rio Grande Railway* [1905] 2 Ch. 84). See ANCILLARY; BORROW.

“Or any of its subsidiaries” (Companies Act 1985 (c.6) s.151). “Subsidiaries” here means English subsidiaries and did not prevent a foreign subsidiary from giving financial assistance for the acquisition of shares in its English parent company (*Arab Bank v Mercantile Holdings* [1994] Ch. 71).

“Subsidiary company”: Stat. Def., Companies Act 1985 (c.6) s.736; Companies Act 1989 (c.40) s.144; Companies Act 2006 s.1159.

SUBSIDY. “Subsidy, *subsidium*”, signifies an ayd, tax, or tribute, granted by Parliament to the King, for the urgent occasions of the kingdom, to be levied of every subject according to the rate of his land or goods, after four shillings in the pound for land, and two shillings eight pence for goods” (Cowel; see hereon 2 Bl. Com. 307–316).

Lands granted by the Crown under the Canadian Railway Land Subsidies Act 1890, were “to be granted as a subsidy—i.e. by way of bounty, and not by way of SALE”; therefore, the regulations on sales which authorised the reservation of mines and minerals were not applicable to these subsidy lands, except as to gold and silver (*Calgary, etc. Railway v The King* [1904] A.C. 765).

For a definition of what amounts to expenditure (of a company) which is subsidised from public money see para.8 of Sch.20 to the Finance Act 2000 (c.17).

See CROSS-SUBSIDY.

SUBSIST. Limitations continue to “subsist”, as regards exemption from estate duty under Finance Act 1894 (c.30) s.5(3), so long as there is any estate created by the settlement which has not come to an end (per Williams J., *Att-Gen v Wood* [1897] 2 Q.B. 102).

SUBSISTENCE. “During the subsistence of the marriage” (Matrimonial Proceedings (Magistrates Courts) Act 1960 (c.48) s.1(1)) means while the marriage continues to exist. Cessation of cohabitation does not affect the “subsistence” of the marriage (*Waters v Waters* [1968] P. 401).

Stat. Def., “includes food and drink and temporary living accommodation” (s.200F(5) of the Income and Corporation Taxes Act 1988 (c.1), inserted by s.58 of the Finance Act 2000 (c.17)).

SUBSISTING. Trusts “subsisting and capable of taking effect”: see *Smyth-Pigott v Smyth-Pigott* [1884] W.N. 149.

Uses “capable of taking effect comprehend, no doubt, what are existing or remain possible in fact, but, on a literal and grammatical construction, extend also to what is allowable in law” (per Kekewich J., *Re Finch and Chew* [1903] 2 Ch. 486); therefore, if in executing a power, the appointer directs that the property shall go to the uses declared by a stated instrument “or such of them as are capable of taking effect”, and some of those uses are invalid, e.g. as creating a perpetuity, such void uses will be struck out and the appointment will be valid as regards the other uses (*Re Finch*). Cp. *Wortham v Mackinnon*, 4 Sim. 495, cited EXISTING. See Law of Property Act 1925 (c.20) ss.4, 39.

Estates, etc. “subsisting or to arise”, under a settlement (Settled Land Act 1925 (c.18) s.72(2)): see *Re Dickin & Kelsall* [1908] 1 Ch. 213, cited SUBJECT TO; *Re Davies & Kent* [1910] 2 Ch. 35, cited TRUSTEE.

Rights or interests “subsisting and valuable”: see RIGHTS.

Cp. EXISTING.

SUBSOIL. “Subsoil” includes, prima facie, all that is below the actual surface down to the centre of the earth (see *Cox v Glue*, 5 C.B. 549). It is, therefore, a wider term than ‘mines’ or ‘quarries’, or even than ‘minerals’ (see *Atkinson v King*, 2 L.R. Ir. 339). And an exception of ‘coals and coal mines’ will only comprise that portion of the subsoil which actually consists of mines of coal, and will not comprise any intervening or other strata (see *Ramsay v Blair*, 1 App. Ca. 704)” (MacS. (5th edn), 24).

See LAND; MINE; SOIL; VEST; *Metropolitan Railway v Fowler* [1893] A.C. 416, and *Farmer v Waterloo & City Railway* [1895] 1 Ch. 627, cited APPROPRIATE.

SUBSTANCE. “What is ‘substance’? It is every property a man has. So, in the Abduction Act 1558 (c.8), for the punishment of such as shall take away maidens that be inheritors, the word ‘substance’ is made use of and means worldly wealth”; “‘substance’ includes everything that can be turned into money” (per Mansfield C.J., *Hogan v Jackson*, 1 Cowp. 307). See also *MacLagan’s Trustees v Lord Advocate*, 11 Sc. L.T. 227, See WORLDLY ESTATE; WORLDLY GOODS.

A covenant to settle “fortune or substance”, embraces real estate (*Scully v Scully*, Sug. Prop. 104; see further FORTUNE). In *Maitland v Adair* (3 Ves. 231), cited 2 Jarm. (8th edn), 989, “my fortune” was, by a context, confined to personalty. See also as to “fortune”, *Bacon v Cosby*, 20 L.J. Ch. 213; “future fortune”: see FUTURE.

“Substance recommended as a medicine” (Pharmacy and Medicines Act 1941 (c.42) s.17(1)): see *Nairne v Stephen Smith & Co Ltd* [1943] K.B. 17 (Hall’s Wine); *Potter & Clarke v Pharmaceutical Society of Great Britain* [1947] Ch. 483.

In a defence to a libel on a newspaper report of a trial, it is not a sufficient justification to say that the report was “in substance” a true report and account of the trial (*Flint v Pike*, 4 B. & C. 473, which see for observations on that phrase).

“Defect in substance” (Summary Jurisdiction Act 1848 (c.43) s.1): see *Rodgers v Richards* [1892] 1 Q.B. 555. See Magistrates’ Courts Act 1952 (c.55) s.100. Cp. VARIANCE.

“Not of the substance demanded” (Food and Drugs Act 1938 (1 & 2 Geo. 6, c.56) s.3(1)). “‘Substance’ would include matters where there had been adulteration of the article” (per Lord Goddard C.J., in *Bastin v Davies* [1950] 2 K.B. 579).

“Substance” (R.S.C. Ord.38 r.38). Where an order is made under r.38 that the substance of expert evidence to be adduced be disclosed, the “substance” is not

SUBSTANTIAL

confined to factual descriptions but should include the expert's conclusions (*Ollett v Bristol Aerojet (Note)* [1979] 1 W.L.R. 1197). See also POINT OF SUBSTANCE.

"Substance likely to cause persons to slip" (Factories Act 1961 (c.34) s.28(1)): the words "likely to cause persons to slip" qualify only the word "substance". They do not limit the amount of floor area which is to be kept free under the section. Short lengths of metal rods which had fallen from a workman's bench were held to be such a "substance" (*Hall v Fairfield Shipbuilding and Engineering Co*, 1962 S.L.T. 206). "Substance" under this section includes water (*Taylor v Gestetner* (1967) 2 K.I.R. 133).

"Nature, substance, or quality": see NATURE.

"Substances": see MINE.

"Hard and incombustible substances": see WALL.

"Substance" contrasted with "MATTER": see DESTRUCTIVE.

Stat. Def., Food and Drugs Act 1955 (c.16) s.135(1); Radioactive Substances Act 1960 (c.34) s.19(1); Medicines Act 1968 (c.67) s.132; Health and Safety at Work Act 1974 (c.37) s.53; Development Land Tax Act 1976 (c.24) Sch.4 para.9; Food Act 1984 (c.30) s.132; Consumer Protection Act 1987 (c.43) s.45; Water Act 1989 (c.15) s.189.

Stat. Def., "any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour" (para.31(1) of Sch.22 to the Finance Act 2001 (c.9)).

Stat. Def., s.115(1) of the Anti-terrorism, Crime and Security Act 2001 (c.24).

Stat. Def., "includes any natural or artificial substance (whatever its origin or method of production and whether in solid or liquid form or in the form of a gas or vapour) and any mixture of substances" (Terrorism Act 2006 s.6(7)).

See PROCEDURE.

SUBSTANTIAL. A word of no fixed meaning, it is an unsatisfactory medium for carrying the idea of some ascertainable proportion of the whole (*Terry's Motors Ltd v Rinder* [1948] S.A.S.R. 167).

In a lease under which the landlord is liable for "structural repairs of a substantial nature", the word "substantial" is equivalent to "considerable", and the liability should be measured more by reference to the antecedent disrepair than to the nature of the repair work (*Granada Theatres v Freehold Investment (Leytonstone)* [1958] 1 W.L.R. 845).

"Substantial part of the... rent" (Rent Act 1968 (c.23) s.2(3)). In calculating whether the use of furniture accounts for a substantial part of the rent it is the value of the furniture to the tenant, and not its cost to the landlord, which is relevant (*Goel v Sagoo* [1970] 1 Q.B. 1). See this case and also *Thomas v Pascall* [1969] 1 W.L.R. 1475 for discussions as to what percentage might be considered "substantial". In calculating whether the value to the tenant of the use of furniture accounts for a substantial part of the rent, the court should take into account changing economic conditions such as the shortage of housing and the availability of cheap furniture at secondhand shops (*Woodward v Docherty* [1974] 1 W.L.R. 966). The value, to a tenant of a bachelor service apartment, of the work done by a housekeeper in cleaning the rooms daily and providing clean linen weekly, was held to have formed a "substantial part of the whole rent" within the meaning of this section (*Marchant v Charters* [1977] 1 W.L.R. 1181). Rental value of furniture at an estimated 9 per cent of the "whole rent" was considered not to be a "substantial part" (*Mann v Cornella* (1980) 254 E.G. 403).

“Substantial part” (Landlord and Tenant Act 1954 (c.56) s.30(1)(f)). Where the landlord proposed to alter only the ground floor shop and to make no changes in the two upper storage storeys, it was held that the shop alone was not a “substantial part of those premises” within the meaning of this section (*Atkinson v Bettison* [1955] 1 W.L.R. 1127). But the removal of a dividing wall between two shops, the reconstruction of an entirely new shop front and alterations to the lavatory accommodation were held to involve a “substantial part” of the premises within the meaning of this section (*Bewlay v British Bata Shoe Co* [1959] 1 W.L.R. 45).

“Substantial work of reconstruction” (Landlord and Tenant Act 1954 (c.56) s.30(1)(f)). The removal of ground floor partition walls and the installation of steel girders to support the upper floors was “substantial work of reconstruction” within this section (*Joel v Swaddle* [1957] 1 W.L.R. 1094).

“Substantial proportion” (Landlord & Tenant Act 1954 (c.56) s.43(1)(d) (i)). Transactions other than the sale of intoxicating liquor amounting to 17 or 18 per cent of the business done by a public house were held not to amount to a “substantial proportion” of the whole (*Grant v Gresham* [1979] E.G. 190).

“Substantial number” in support of a development council (Industrial Organisation and Development Act 1947 (c.40) s.1(4)). One thousand firms out of 6,000 and 150,000 employees out of 474,000 are not insubstantial numbers (*Thorneloe and Clarkson v Board of Trade* [1950] 2 All E.R. 245).

In deciding whether the reproduced part of copyright material is a “substantial” part of the whole it is the quality rather than the quantity of the part that should be considered (*Ladbroke (Football) v William Hill (Football)* [1964] 1 W.L.R. 273).

“Substantial” (Restrictive Trade Practices Act 1956 (c.68) s.21(1)(b)) is not a term that demands a strictly quantitative or proportional assessment (*Re Net Books Agreement* 1957 [1962] 1 W.L.R. 1347; *Re Finance Houses Association's Agreement* [1965] 1 W.L.R. 1419).

“Substantial value or advantage” (Law of Property Act 1925 (c.20) s.84(1A)). The true measure of substantiality lies in the degree of depreciation in the value of the enjoyment of the property of the objector which would result from the modification of a restrictive covenant (*Re Gaffney's Application* (1974) 35 P. & C.R. 440). A “resplendent” view over the surrounding landscape could be a “practical benefit of substantial value or advantage” within the meaning of this section (*Gilbert v Spoor* [1982] 3 W.L.R. 183).

“Substantial rebuilding or reconstruction” (Leasehold Reform Act 1967 (c.88) s.4(1)(d)). The addition of bathrooms, lavatories and wash basins was an improvement and not a “substantial rebuilding or reconstruction” within the meaning of this section (*Gidlow-Jackson v Middlegate Properties* [1974] Q.B. 361).

“Substantial contribution” (Inheritance (Provision for Family and Dependents) Act 1975 (c.63) s.1(3)). In calculating whether the deceased had been making “a substantial contribution” towards the needs of an applicant under this Act, contributions made for full consideration, whether by agreement or otherwise, are to be disregarded (*Re Beaumont (Deceased)*; *Martin v Midland Bank Trust Co* [1979] 3 W.L.R. 818). The court must consider whether on balance the contributions made by the deceased were substantially greater than those made by the applicant (*Jelly v Iliffe* [1981] 2 W.L.R. 801).

“Substantial reason of a kind such as to justify the dismissal of an employee” (Industrial Relations Act 1971 (c.72) s.24(1)(b); now Employment Protection

(Consolidation) Act 1978 (c.44) s.57(1)(b)). In deciding whether an employee has been dismissed for a "substantial reason" a court or tribunal should not construe that phrase as being ejusdem generis with the reasons for dismissal listed in the 1971 Act s.24(2) (now s.57(2) of the 1978 Act). This list should not be considered exhaustive (*RS Components v Irwin* [1973] I.C.R. 535; *Priddle v Dibble* [1978] 1 W.L.R. 895). Failure to pass an aptitude test could well be a "substantial reason" for dismissal (*Blackburn v Post Office* [1974] I.C.R. 151). See also SUCH. The non-renewal on expiry of a fixed-term contract to do a temporary job was "some other substantial reason" such as to justify dismissal (*Terry v East Sussex CC* [1976] I.C.R. 536). The refusal of an employee to co-operate with his employers in the reorganisation of the business was considered a "reason" "substantial" enough "to justify" his "dismissal" (*Hollister v National Farmers' Union* [1979] I.C.R. 542). The non-acceptance of the employee by the company's insurers for the purpose of fidelity guarantee insurance (where it was a condition of employment that he should be accepted) was held to be a "substantial reason" for dismissal (*Moody v Telefusion* (1978) 13 I.T.R. 425). A sentence of imprisonment is capable of being a "substantial reason" for the purposes of s.57 (*Kingston v British Railways Board* [1984] I.C.R. 781). The installation of a modern heating system requiring the services of a heating technician was a "substantial reason" for dismissing the plumber who had serviced the old equipment but was unqualified to service the new (*Murphy v Epsom College* [1984] I.C.R. 80).

Where an agreement for the sale of gas provided for a price review if either party suffered "substantial economic hardship" it was held that "substantial" meant something more than ordinary every day variations and difficulties arising in economic circumstances; it meant something weighty or serious (*Superior Overseas Development Corp and Phillips Petroleum (UK) Co v British Gas Corp* [1982] 1 Lloyd's Rep. 262).

"Substantial risk that the course of justice... will be seriously... prejudiced" (Contempt of Court Act 1981 (c.49) s.2(2)). These words refer not to the acts or omissions relied on as giving rise to liability but to the casualty caused by the acts or omissions. So that where, in a libel action against a newspaper the defence of justification was relied on, it was held that repetition of the allegations by another newspaper 11 months before the earliest date set for the trial did not pose a "substantial risk" of prejudice (*Att-Gen v News Group Newspapers* [1986] 3 W.L.R. 365). In considering whether the strict liability rule applied under s.2(2) in respect of a publication, the court had to ask in each case whether in the circumstances the publication created at the time of its publication a substantial risk that the course of justice could be seriously impeded or prejudiced. The risk had to be a practical risk (*Att-Gen v Guardian Newspapers* [1992] 3 All E.R. 38).

A court could not be satisfied that there was a "substantial risk that the course of justice... will be seriously... prejudiced" where despite very noteworthy information, a broadcast in a news bulletin had been very brief, ephemeral in nature and where there had been a relatively small circulation of the information in newspapers in an area well away from the place of trial nine months' later (*Att-Gen v Independent Television News* [1995] 1 All E.R. 370).

Where there had been saturation coverage of a news item in the months before an incident which led to court proceedings, further intense news coverage concerning that incident did not necessarily create a greater risk of prejudice than that which already existed; each publication had to be considered separately as at the date of publication

and the impact on a potential juror at the time of trial assessed (*Att-Gen v Mirror Group Newspapers Ltd* [1997] 1 All E.R. 456).

“A substantial part of the United Kingdom” (Fair Trading Act 1973 (c.41) s.64(3)) means a part of such size, character or importance as to merit consideration. It need not necessarily be a large part (*R. v Monopolies and Mergers Commission, Ex p. South Yorkshire Transport* [1993] 1 W.L.R. 23).

“Substantial links” (Secretary of State’s Statement of Policy, July 25, 1990). The fact that an asylum-seeker has friends in the United Kingdom does not in itself amount to “substantial links” with the United Kingdom for the purposes of this statement (*R. v Secretary of State for the Home Department, Ex p. Dursun (Huseyin)* [1991] Imm.A.R. 297).

“Substantial part of the whole rent” (Rent Act 1977 (c.42) s.7(2)). The amount of rent attributed to the provision of a full laundry service can be a “substantial” part of the whole for the purposes of this section (*Nelson Developments v Taboada* (1992) 24 H.L.R. 462).

“Some other substantial reason of a kind such as to justify... dismissal” (Employment Protection (Consolidation) Act 1978 (c.44) s.57(1)(b)). An expression of an intention to resign by an employee could qualify as a reason for dismissal under this section (*Ely v YKK Fasteners (UK)* [1994] I.C.R. 164).

A “substantial” amount of contributory negligence meant a considerable amount (*Calder v Simpson* (1994) S.L.T. 32).

(Public Order Act 1986, (c.64) s.4.)

A “substantial cause” should be more than merely “de minimis”. The conduct of a person, charging at a police officer, who put out his leg to stop him, thereby suffering an ankle injury, was the substantial cause of the officer’s injury (*R. v Hennigan* (1971) 55 Cr.App.R. 262 approved and *R. v Roberts (Kennedy)* (1972) 56 Cr.App.R. 95 followed by *R. v Notman* [1994] Crim. L.R. 518).

(Civil Jurisdiction and Judgments Act 1982 (c.27) s.41(3)(b).) Enforced presence by reason of a condition of bail that he should remain in the United Kingdom did not indicate that a defendant had a “substantial connection” with the United Kingdom for the purposes of s.41(3)(b) of the 1982 Act (*Petrograde Inc v Smith* [1998] 2 All E.R. 346).

In context of copyright and copying substantial part of a work, see *Designers Guild Ltd v Russell Williams (Textiles) Ltd* [2000] 1 W.L.R. 2416, HL.

Note also that when considering whether a “substantial part” of the typographical arrangement of an edition has been copied the crucial question is whether there has been copying of sufficient of the relevant skill and labour which went into producing that edition (*Newspaper Licensing Agency Ltd v Marks & Spencer Plc* [2001] 3 W.L.R. 290, HL).

The question of whether one thing is a substantial part of another can, sometimes, be evaluated quantitatively, qualitatively or both. So: “70 The expression ‘substantial part, evaluated quantitatively’, of the contents of a database within the meaning of Article 7(1) of the directive refers to the volume of data extracted from the database and/or re-utilised, and must be assessed in relation to the volume of the contents of the whole of that database. If a user extracts and/or re-utilises a quantitatively significant part of the contents of a database whose creation required the deployment of substantial resources, the investment in the extracted or re-utilised part is, proportionately, equally substantial. 71 The expression ‘substantial part, evaluated

qualitatively’, of the contents of a database refers to the scale of the investment in the obtaining, verification or presentation of the contents of the subject of the act of extraction and/or re-utilisation, regardless of whether that subject represents a quantitatively substantial part of the general contents of the protected database. A quantitatively negligible part of the contents of a database may in fact represent, in terms of obtaining, verification or presentation, significant human, technical or financial investment.” (*British Horseracing Board Ltd v William Hill Organization Ltd* (C-203/02) [2005] 1 C.M.L.R. 15).

“Next there is the question of what is meant by ‘a substantial amount of money’. In my view that phrase means a substantial, as opposed to a negligible, amount of money. However, that judgment has to be made in the context of the total claim made. What is a substantial amount of money in a case where there is a comparatively small claim may not be a substantial amount when the claim is for a much larger claim. It may be that in very small claims an applicant could never satisfy the court that, even if it obtained judgment, the amount of money it would obtain would be ‘substantial’. But that is not this case and each must be decided on its facts.” (*Revenue and Customs v The GKN Group* [2012] EWCA Civ 57.)

“The parties agree that the word ‘substantial’ has a wide range of meanings. Reference was made to *Majorstake Ltd v Curtis* [2008] 1 AC 787. Baroness Hale of Richmond considered a point which had not hitherto been argued in that case, which was whether in a block of flats 2 flats out of 50 constitute a ‘substantial part of’ the ‘premises’ within the meaning of s.47(2) of the Leasehold Reform, Housing & Urban Development Act 1993. Baroness Hale stated, at paragraph 40:

““Substantial” is a word which has a wide range of meanings. Sometimes it can mean “not little”. Sometimes it can mean “almost complete”, as in “in substantial agreement”. Often it means “big” or “solid”, as in a “substantial house”. Sometimes it means “weighty” or “serious”, as in a “substantial reason”. It will take its meaning from its context. But in an expression such as a “substantial part” there is clearly an element of comparison with the whole: it is something other than a small or insignificant or insubstantial part. There may be both a qualitative element of size, weight or importance in its own right; and a quantitative element, of size, weight or importance in relation to the whole. The works intended by this landlord are substantial in relation to each of the flats involved, but those flats do not in my view constitute a substantial part of the whole premises.’ In *Palser v Grinling* [1948] AC 291, it was necessary to consider whether ‘the amount of rent which is fairly attributable to the attendance or the use of furniture, regard being had to the value of the same to the tenant, forms a substantial portion of the whole rent’ within the meaning of s.10(1) of the Rent & Mortgage Interest Restrictions Act 1923, as amended. Viscount Simon stated, at page 316-7:

“It is plain that the phrase requires a comparison with the whole rent, and the whole rent means the entire contractual rent payable by the tenant in return for the occupation of the premises together with all the other covenants of the landlord. “Substantial” in this connexion is not the same as “not unsubstantial”, i.e., just enough to avoid the “de minimis” principle. One of the primary meanings of the word is equivalent to considerable, solid, or big. It is in this sense that we speak of a substantial fortune, a substantial meal, a substantial man, a substantial argument or ground of defence. Applying the word in this sense, it must be left to the discretion of the judge of fact to decide as best he can according to the circumstances in each case, the onus being on

the landlord. If the judgment of the Court of Appeal in *Palser's* case were to be understood as fixing percentages as a legal measure, that would be going beyond the powers of the judiciary. To say that everything over 20 per cent. of the whole rent should be regarded as a substantial portion of that rent would be to play the part of a legislator: if Parliament thinks fit to amend the statute by fixing percentages, Parliament will do so. Aristotle long ago pointed out that the degree of precision that is attainable depends on the subject matter. There is no reason for the House to differ from the conclusion reached in these two cases that the portion was not substantial, but this conclusion is justified by the view taken on the facts, not by laying down percentages of general application.' In *R v Monopolies and Mergers Commission Ex Parte South Yorkshire Transport* [1993] 1 WLR 23, the expression 'substantial part of the United Kingdom' in s.64(3) of the Fair Trading Act 1973 was considered. Lord Mustill stated:

"It is sufficient to say that although I do not accept that "substantial" can never mean "more than de minimis" or that in [*Palser*], Viscount Simon was saying more than that in the particular statutory context it did not have this meaning, I am satisfied that in s.64(3) the word does indeed lie further up the spectrum than that. To say how far up is another matter. The courts have repeatedly warned against the dangers of taking an inherently imprecise word, and by redefining it thrusting on it a spurious degree of precision.' The expression 'substantially impaired' in s.2(1) of Homicide Act 1957 (diminished responsibility) has been considered in a criminal context. In *R v Lloyd* [1967] 1 QB 175, at page 181, Edmund Davies J, giving the judgment of the Court of Appeal Criminal Division, approved the direction given to the jury by the trial judge:

"You are the judges, but your own common sense will tell you what it means. This far I will go. Substantial does not mean total, that is to say, the mental responsibility need not be totally impaired, so to speak, destroyed altogether. At the other end of the scale substantial does not mean trivial or minimal. It is something in between and Parliament has left it to you and other juries to say on the evidence, was the mental responsibility impaired, and, if so, was it substantially impaired?' No advice as to the test to be applied appears in the CVO's report, as disclosed. It is not surprising that the CVO has not advised the Minister on statutory construction. Parts of the report are redacted and it may be that the legal advice was included in those parts. In a post-decision letter of 3 December 2009, the respondents replied to a detailed letter of claim sent by the appellants' solicitors. Having referred to the evidence, they stated, at paragraph 10:

"It seems to us that these two pieces of research plainly constitute evidence that the destruction of badgers would substantially reduce the incidence of disease, in the sense that the reduction would be more than insignificant or trivial. Accordingly, we are unable to accept your assertion that there was no evidence before the Welsh Ministers to support a conclusion that the destruction of badgers would eliminate or substantially reduce the incidence of disease and we reject your first purported ground of claim.' It may be that it is correct to infer from that paragraph, even though in a letter written a considerable time after the decision and in reply to the appellants' letter of claim, that the Minister did apply the test subsequently advocated on her behalf. It is unfortunate that the legal advice she received, if any, was not set out in a disclosable document. It is frequently set out, in a planning context, in the advice given to a decision maker and I see no reason why it should not have been transparent in this case. Failure to disclose

SUBSTANTIAL

may have resulted in an unfairness to the Minister. In the same way as a jury in a criminal case, if she was advised about the range of events the word substantial is capable of covering, she could form her own view.” (*Badger Trust v The Welsh Ministers* [2010] EWCA Civ 807.)

“Substantial work of reconstruction”: see RECONSTRUCTION.

See CAUSE.

SUBSTANTIAL PERFORMANCE. Stat. Def., “A contract is “substantially performed” when (a) the purchaser takes possession of the whole, or substantially the whole, of the subject-matter of the contract, or (b) a substantial amount of the consideration is paid or provided. . . .” (Finance Act 2003 (c.14) s.44(5)).

SUBSTANTIAL WEIGHT. “127. I turn to consider the irrationality argument. I would make the preliminary observation that expressions such as ‘substantial weight’, or for that matter ‘limited weight’, do not have some uniform meaning, or even carry some numerical evaluation. Their significance depends upon the particular context in which they have been used. They often represent no more than a summary expressing how the decision-maker has pulled together a number of judgmental factors. It is difficult to see how in the present type of case a rationality challenge could succeed merely on the basis that a decision-maker has decided to give ‘substantial weight’ to a policy. Instead, the challenge ought to be directed to the process of reasoning which has been adopted.” (*Luton Borough Council, R. (on the application of) v Central Bedfordshire Council* [2014] EWHC 4325 (Admin).)

SUBSTANTIALLY. WORKS “substantially commenced”: see *Att-Gen v Bournemouth* [1902] 2 Ch. 714, in which case also *Re Dudley Trams Co*, 63 L.J. Ch. 108, cited CONCLUSIVE EVIDENCE, was disapproved.

Substantially infringe a patent: see per Grove J., *Young v Rosenthal*, 1 Pat. Ca. 33, 41.

The words “‘substantially as described’ (in a patent claim) are treated sometimes as lessening, sometimes as increasing the width of the claim. In the U.S.A. the words are not allowed. They ought to be treated as meaning that the invention does the thing described substantially as described” (per Fletcher Moulton L.J., *Bernard v LGOC*, 38 R.P.C. 1).

“Substantially the same” (R.S.C. Ord.16A r.12(1)(b)(c), now Ord.16 r.1(1)(b)). The words relate to facts which have to be examined for the purpose of ascertaining what is the relief or remedy to which the parties are entitled. “Substantially” must have been put in in order to embrace within the rule something which was not exactly a repetition of the relief or remedy asked for (*Re Burford* [1932] 2 Ch. 122, 138). For further discussions as to what is or is not “substantially the same” within the meaning of this rule, see *Standard Securities Ltd v Hubbard (Telesurance Ltd Third Party)* [1967] Ch. 1056, and *Chatsworth Investments Ltd v Amoco (UK) Ltd* [1968] Ch. 665).

“Substantially impaired” (Homicide Act 1957 (c.11) s.2(1)). Substantial does not mean trivial or minimal, neither does it mean total. It is for the jury to decide whether the impairment is substantial (*R. v Lloyd* [1967] 1 Q.B. 175). See also *R. v Biess* [1967] Qd. R. 470.

An owner who is directed by an improvement notice to do work to a dwelling which he cannot lawfully be directed to do is “substantially prejudiced” within the meaning of s.27(3) of the Housing Act 1964 (c.56) (*De Rothschild v Wing RDC* [1967] 1 W.L.R. 470; *Harrington v Croydon Corporation* [1968] 1 Q.B. 856).

“Substantially prejudiced” (Acquisition of Land (Authorised Procedure) Act 1946 (c.49) Sch.1 para.15(1)(b)). In a case where, after requests for information as to ownership had revealed no other interest, a compulsory purchase order was served on the husband only, it was held that the wife, who had a joint interest with her husband but had not attended the inquiry, had not been “substantially prejudiced” (*George v Secretary of State for the Environment* (1979) 38 P. & C.R. 609).

“Substantially different from... ordinary dwelling-houses” (Housing Act 1980 (c.51) Sch.1 Pt 1 para.3). The addition of a downstairs lavatory, installed for the benefit of a child who had difficulty climbing stairs, did not make a house “substantially different” within the meaning of this paragraph (*Freeman v Wanstead DC* [1984] 2 All E.R. 746).

“Substantially to the like effect” (Landlord and Tenant (Notices) Regulations 1954 (SI 1954/1107) reg.4). The form of notice to quit prescribed by the 1954 Regulations, although replaced by one prescribed by the 1969 Regulations (No.1771), was held to be “substantially to the like effect” as the later form and therefore valid (*Sun Alliance and London Assurance Co v Hayman* [1975] 1 W.L.R. 177; *Snook v Schofield* (1975) 234 E.G. 197). Where a notice to quit was issued in the form prescribed by these Regulations but omitting certain notes which were irrelevant in the circumstances of this case, it was held that the form used was “substantially to the like effect” as the one prescribed (*Tegerdine v Brooks* (1978) 36 P. & C.R. 261).

A building could be “substantially completed” within the meaning of para.9 of Sch.1 to the General Rate Act 1967 (c.9) notwithstanding that the architect had not yet issued a certificate of practical completion (*London Merchant Securities v Islington LBC* [1986] R.A. 81). But see the report of the appeal to the House of Lords ([1987] 3 W.L.R. 173).

“Substantially prejudiced” (Town and Country Planning Act 1971 (c.78) s.84(4)(b)). For parties to establish that they had been “substantially prejudiced” by a local authority’s failure to serve them directly with enforcement notices they must prove that the position they are in would have been materially different had they been properly served (*Mayes v Secretary of State for Wales* [1989] J.P.L. 848).

SUBSTANTIALLY COMPLETED. In s.171(B)(l) of the Town and Country Planning Act 1990: see *Sage v Secretary of State for the Environment, Transport and the Regions* [2003] 1 W.L.R. 983, HL.

SUBSTANTIALLY TO THE LIKE EFFECT. A notice is substantially to the like effect as a notice in a prescribed form if it accomplishes the statutory purpose of imparting the information concerned (*Ravenseft Properties Ltd v Hall* [2002] 11 E.G. 156). See also *New Law Journal*, March 29, 2002, pp.460–62.

SUBSTITUTE. ““Substitute, *substitutus*”, one placed under another to transact or do some business” (Cowel).

Where a contract specified shipment by a specific ship “or substitute” this option was exercisable by the shipper as well as the ship owner, and thus bound him to send the goods within a reasonable time (*Borthwick (Thomas) v Bunge & Co* [1969] 1 Lloyd’s Rep. 17).

“Substitute for beer”: see BEER.

See SHERIFF.

SUBSTITUTED. “Collateral, or auxiliary, or additional, or substituted, security” (Stamp Act 1891 (c.39) Sch.1 cl. 2, mortgage): where a trust deed of a company is to secure debentures or debenture stock with power to surrender or withdraw part of the

SUBSTITUTION

property therein comprised, and only a small part of such property is surrendered or withdrawn and in lieu thereof another small property is conveyed to the trustees but without any covenant for payment of the debentures or debenture stock or any declaration of trust of the newly assured property, such latter conveyance is a "substituted security" for the whole amount of the debentures or debenture stock, and the *ad valorem* duty of 6d. per £100 has to be paid thereon (*Gartsides Co v Inland Revenue Commissioners*, 82 L.T. 686). See also *City of London Brewery v Inland Revenue Commissioners* [1899] 1 Q.B. 121, on which see *Mount Lyell Co v Inland Revenue Commissioners* [1904] 1 K.B. 757, cited SUBSTITUTION; *British Oil Mills Co v Inland Revenue Commissioners* [1903] 3 K.B. 689; *Suffield v Inland Revenue Commissioners* [1908] 1 K.B. 865.)

SUBSTITUTION. Fixtures, plant, etc. "in substitution" of others (Bills of Sale Act 1882 (c.43) s.6(2)): see *London & Eastern Counties Loan Co v Creasy* [1897] 1 Q.B. 768, cited PLANT.

Marketable security "given in substitution for a like security" (Stamp Act 1891 (c.39) Sch.1, Marketable Security (4)) means a marketable security "which is like the original security" as regards duty; therefore, marketable securities given by a colonial company on the surrender of similar ones by an English company are not within the phrase, because they become liable to stamp duty under different considerations and circumstances (*Mount Lyell Co v Inland Revenue Commissioners* [1904] 1 K.B. 757; affirmed [1905] 1 K.B. 161). See SECURITY; Finance Act 1910 (c.8) s.76.

A gift "by substitution" in a will: see *Re Lord's Settlement* [1948] L.J.R. 207. See ADDITION; LIEU; NOVATION; SUBROGATION.

SUBSTITUTIONAL. As to construction of substitutional gifts: see 2 Jarm. (8th edn), Ch. 37; SHARE, and especially *Christopherson v Naylor*, 1 Mer. 320, there cited. See also *Re Joseph* [1908] 2 Ch. 507.

"Substitutional legacy": see CUMULATIVE.

SUBSTITUTIVE. "Substitutive limitation" (Succession Duty Act 1853 (s.2)): see *Att-Gen v Eyres* [1909] 1 K.B. 723.

SUBTERRANEAN WATER. See hereon *Grand Junction Canal Co v Shugar*, 6 Ch. 483; *Popplewell v Hodkinson*, L.R. 4 Ex. 248; *Ballard v Tomlinson*, 29 Ch. D. 115. See also *Bradford v Ferrand* [1902] 2 Ch. 655, cited DEFINED CHANNEL; *Salt Union v Brunner* [1906] 2 K.B. 822.

See DEFINED CHANNEL; WATERS.

SUBURB. "As the heavens are the habitation of Almighty God, so the earth hath he appointed as the suburbs of heaven to be the habitation of man" (Co. Litt. 4A).

Croydon might perhaps be held to be a "suburb" of London, but it is not "one of the western suburbs of London or in the adjacent county", within a clause for the purchase of land for a home: see *Re Whiteley*, 55 S.J. 291, where Eve J. said he did not treat the word "adjacent" as meaning "adjoining".

SUCCEED. On the construction of a will, see *Bagot v Legge*, 34 L.J. Ch. 156.

"If any person shall have succeeded to any trade", etc. (Income Tax Act 1842 (c.35) s.100, Sch.D, 3rd set of rules, No.4): see *Ryhope Co v Foyer*, 7 Q.B.D. 485. See also *Bell v National Provincial Bank* [1904] 1 K.B. 149, explaining *Ferguson v Aikin*, 4 Tax Cases 36; *Watson v Inland Revenue Commissioners*, 39 Sc. L.R. 604; TRADE; *Kirk & Randall Ltd v Dunn*, 8 Tax Cas. 663.

“Succeeded” (Income Tax Act 1918 (c.40) Sch.D Cases I and II r.9). Where there was a change in a partnership, the new partnership was taken to have succeeded to the old partnership (*Income Tax Commissioners v Gibbs* [1942] A.C. 402).

“Succeed to a business” (Finance Act 1926 (c.22) s.32; Income Tax Act 1945 (c.32) s.17; see now Income and Corporation Taxes Act 1970 (c.10) s.154). A manufacturing subsidiary company which sold all its products to its parent company who retailed them, was wound up and the parent company continued itself to manufacture the goods at the same factory and sell them as before. Held, that the parent company did not “succeed” to the business of the subsidiary. That business had entirely ceased. Selling wholesale is one business and selling retail is another (*Laycock v Freeman, Hardy & Willis Ltd* [1939] 2 K.B. 1). Cf. *Briton Ferry Steel Co v Barry* [1940] 1 K.B. 463. But the fact that a company had gone out of business (as when a road haulage company had been nationalised) did not of itself mean that there had not been a succession (*Bramford’s Road Transport v Evans* [1953] 1 W.L.R. 1385). See also *IRC v Barr* [1954] 1 W.L.R. 792.

See SUCCESSORS IN BUSINESS.

SUCCEEDING. The phrase “succeeding overseers” (Poor Relief Act 1743 (c.38) s.11) was not confined to overseers who immediately succeeded those who made the rate; “succeeding”, there, semble, meant “subsequent” (*East Dean v Everett*, 30 L.J.M.C. 117). Cp. SUCCESSIVE.

SUCCESS. “‘Success’ for the purposes of the CPR is ‘not a technical term, but a result in real life’ and ‘is a matter for the exercise of common sense’: see Lightman J. in *BCCI v Ali* (No 4) 149 NLJ 1734 at paragraph 7.” (*Jones v Secretary of State for Energy And Climate Change* [2012] EWHC 3647 (QB).)

See REASLISTIC PROSPECT OF SUCCESS.

SUCCESSFUL. A plaintiff who recovers nominal damages is not necessarily a “successful” one (*Anglo-Cyprian Trade Agencies v Paphos Wine Industries* [1951] 1 All E.R. 873).

SUCCESSION. For the current rules of succession on Intestacy see Administration Of Estates Act 1925 (c.23) Pt IV.

(Housing Act 1985 (c.68) s.88.) Where a council entered a new tenancy agreement with a wife after her husband had terminated his part of their joint tenancy, she was not a “successor” to the joint tenancy under this section, and her son was, therefore, entitled on her death to succeed her as the successor and therefore became a secure tenant under s.87 (*Bassetlaw DC v Renshaw* (1991) 23 H.L.R. 603).

See PREDECESSOR; DERIVE; DISPOSITION; INHERIT; LEGACY DUTY; UNDER; SUCCESSOR; INTESTATE.

SUCCESSION DUTY. See SUCCESSION.

SUCCESSIVE. A “successive occupier” for purposes of the parliamentary franchise, was one who occupied premises, in the same borough, or division of a county, “in immediate succession” (Representation of the People Acts 1832 (c.45) s.28, and 1867 (c.102) s.26); but such premises might be partly by virtue of service and partly under ordinary tenancies, or wholly by or under either mode of occupation (*Torish v Clark*, 18 L.R. Ir. 285, followed in *Nicholson v Yeoman*, 24 Q.B.D. 145). The successive occupation of lodgings had to be in “the same house” (Parliamentary and Municipal Registration Act 1878 (41 & 42 Vict., c.26) s.6). See also “nature of qualification”, under NATURE. Cp. SUCCEEDING.

SUCCESSIVELY

A “successive owner”, liable to an improvement rate, included a mortgagee in possession (*Blackburn v Micklethwait*, 54 L.T. 539).

“Successive limitations”: see *Re Conyngham* [1921] 1 Ch. 491; *Re Brooke* [1923] W.N. 148.

SUCCESSIVELY. “In many cases devises to several persons successively have been contended to be void on account of the uncertainty respecting the order in which the objects are to take. Where the devise is to several specified individuals in succession, the obvious rule is, to hold them to be entitled in the order in which their names occur. If it be to a class of persons (constituted such in virtue of birth), as to children, sons, or brothers, then priority according to seniority of age may be presumed to be intended. And the circumstance of a condition being imposed on the devisees has been held not to vary the order in which they are successively entitled” (1 Jarm. (8th edn), 497, and cases there cited).

A devise “to the first son of T. severally and successively in tail male” must be read, “to the first, and every other, son”, as otherwise “severally and successively” would be without meaning (*Parker v Tootal*, 11 H.L. Ca. 143; see thereon 1 Jarm. (8th edn), 597, 2 Jarm. 632).

Custom of a manor on grant for lives “successively”: see *Doe d. Nepean v Goddard*, 1 B. & C. 522.

SUCCESSOR; SUCCESSORS. A successor is “he that followeth or cometh in another’s place” (Jacob).

A devise to A “and his successors”, even prior to the Wills Act 1837 (c.26) passed the fee simple (*Webb v Herring*, 1 Rolle, 399, pl. 25; *Att-Gen v Gilbert*, 10 Bea. 517); so, a bequest of personalty to an earl, “and to his successors, *and to be enjoyed with and go with the title*”, is an absolute gift notwithstanding the words italicised (*Re Johnston, Cockerell v Essex*, 26 Ch. D. 538).

But a grant “to any natural person, to have and to hold to him and his successors—by this he hath only an estate for his life” (Touch. 106; see also Co. Litt. 8B).

“Heirs and successors”; where residue was left to “my brothers E. and W. and my sister S. or their heirs and successors” the words “heirs and successors” was not such a reference to the Statutes of Distribution as would oust the general rule that the members of a class took as joint tenants (*Re Kilvert, Midland Bank Executor and Trustee Co v Kilvert* [1957] Ch. 388).

In a conveyance of a fee simple to a corporation the apt words of limitation are “and their successors”; and in the case of a corporation sole, “without these words, successors, there passeth no inheritance” (Co. Litt. 8B; also 94B; see also FEE SIMPLE).

A devise to a minister of religion “and his successors”, e.g. “to T.W., Minister of the Roman Catholic Chapel at Kendal, and to his successors for ever”, is a devise for the benefit of the office held, not of the person named, and was void under the Statute of Mortmain (*Thorner v Wilson*, 24 L.J. Ch. 667).

So, a devise to any person either as, or known to the testator, as a holder of an office in a society, “or his successors”, is for the benefit of the office held; for the primary meaning of “successors” is persons in succession, and the only succession to which the testator could refer is the succession to the office (per Farwell J., *Re Delany* [1902] 2 Ch. 642 following *Thorner v Wilson*, above, and citing *Smart v Prujean*, 6 Ves. 567; cp. *Doe d. Phillips v Aldridge*, 4 T.R. 264, and *Donnellan v O’Neill*, Ir. R. 5 Eq. 532, cited OFFICE; RELIGIOUS). See hereon *Re Lalor*, 71 L.J.P.D. & A. 17.

So, land awarded under an Enclosure Act to A. as “vicar, and his successors”, goes to him only in corporate capacity, “successors” being only a word limiting the fee simple and not having the effect of making the land “settled” (*Ex p. Castle Bytham* [1895] 1 Ch. 348).

The “successors” of a pawnbroker licensed in 1872 (Pawnbrokers Act 1872 (c.93) s.39) were those only who succeeded a pawn shop that he carried on, and their privilege under the section was confined to such a shop; they could not open a new shop without taking out a certificate (*R. v Inland Revenue Commissioners* [1907] 1 K.B. 108).

Obligation in a feu contract binding “our successors”: see *Weir v Trinity Land Co*, 6 Sc. L.T. 344.

“His assigns or successors”: see *Hinkins v Alder*, 50 S.J. 258, cited ASSIGNS.

“Successor in title”: Where a purchaser covenants to do nothing which the vendor or his successors in title consider injurious to the adjoining land, it seems that “successors in title” means successors in title otherwise than by sale (*Zetland (Marquis) v Driver* [1939] Ch. 1). A trustee in bankruptcy was a “successor in title” to a tenant and was bound by a covenant binding the tenant (*Re Wright, Ex p. Landau v The Trustee* [1949] Ch. 729). See Law of Property Act 1925 (c.20) ss.78, 79.

Stat. Def., Trade Union and Labour Relations Act 1974 (c.52) s.30; Housing Act 1980 (c.51) s.31, Limitation Act 1980 (c.58) s.31.

“Successors in office”: see Settled Land Act 1925 (c.18) s.33.

“Successor company”: Stat. Def., Income and Corporation Taxes Act 1970 (c.10) s.252.

In s.88(1) of the Housing Act 1985, as amended by the Housing Act 1996, the word “successor” naturally referred to the successor to a secure tenancy (*Birmingham City Council v Walker* [2007] UKHL 22).

SUCCESSORS AND ASSIGNS. “30. The issue arises as to the meaning and significance of the use of the terms ‘successors and assigns’ in clause 2 and the Schedule. I have been referred to a large number of authorities on the meaning of these words at various times and in various contexts. I do not think that it is necessary or useful to go through them. It is sufficient to say that in conveyances executed prior to August 1881 (the commencement date of the Conveyancing Act 1881) the term ‘assigns’ was used to denote successors in title to the land both of the original restrictive covenantor and of the original covenantee: see e.g. *Tulk v Moxhey* (1848) 2 PL 774; *Renals v Cowlishaw* (1878) 9 Ch D 125 at 130 and (on appeal) (1879) 11 Ch D 866 at 868; *Rogers v Hosegood* [1900] 2 Ch 388 at 407. For the like purpose the term ‘successors and assigns’ was used in case of covenants given by limited companies; see e.g. *Formby v Baker* [1903] 2 Ch 539. The purpose (or at least a purpose) of the use of the formulae appear to have been to make plain the intention that the benefit or burden of the restrictive covenant was not intended to be personal to the covenantor or covenantee.” (*University of East London Higher Education Corporation v London Borough of Barking & Dagenham* [2004] EWHC 2710, Ch, per Lightman J.)

SUCCESSORS IN BUSINESS. Neither partner of a dissolved firm is the “successor” in business of such firm, when each partner goes his own way and carries on business for himself (*Eaton v Western*, 9 Q.B.D. 636).

"Successors in business", in a lessee's covenant to purchase goods of his lessor: see *Birmingham v Jameson*, 67 L.J. Ch. 403, *Manchester Brewery Co v Coombs* [1901] 2 Ch. 608, and *John v Holmes* [1900] 1 Ch. 188, cited SPIRITUOUS LIQUOR.

See SUCCEED.

SUCH. "Such", like "said", generally refers to its last antecedent (see hereon per Halsbury C., *Ex p. Barnes* [1896] A.C. 150). See also *Duffield v M'Naster* [1906] 1 Ir. R. 350, 358.

As to the omission of "such", see *Evans v Evans* [1904] P. 378.

"Such", in testamentary gifts of a substitutional character: see *West v Orr*, 8 Ch. D. 60; *Heasman v Pearce*, 7 Ch. 285; *Miller v Chapman*, 24 L.J. Ch. 409; 2 Jarm (8th edn), 1317.

"Such as shall survive", in a devise to a class, construed as the others or other of them (*Re Tharp*, 33 L.J. Ch. 59). See SURVIVOR.

"Such as to justify" (Industrial Relations Act 1971 (c.72) s.24(1)(b)) was held to mean "can" justify rather than "does" justify (*Mercia Rubber Mouldings v Lingwood* [1974] I.C.R. 256).

Power to appoint to "such" of a class, "authorises exclusion, unless a contrary intention appear" (Farwell (3rd edn), 415, cited by Jessel M.R., *Re Veale*, 4 Ch. D. 64). Cp. ALL AND EVERY; AMONG.

"Such bankrupt" (Bankruptcy Act 1842 (c.122) s.23): see *Norton v Walker*, 3 Ex. 480.

"Such bill" (Solicitors Act 1843 (c.73) s.38 referred back to the bill to be delivered under s.37, and meant a bill as between solicitor and client (*Re Cowdell*, 52 L.J. Ch. 246; following *Re Grundy*, 17 Ch. D. 108).

"Such costs as were necessary or proper for the attainment of justice" (R.S.C. Ord.68 r.28). The fees of a witness which included expenditure that could have been claimed as damages, but had not been, could be claimed instead as costs under this rule (*Manakee v Brattle* [1970] 1 W.L.R. 1607).

"Such deed" (Bankruptcy Act 1861 (c.134) s.198): see *Ames v Colnaghi*, L.R. 3 C.P. 359.

"Such issue": see *Re Hutchinson*, 55 L.J. Ch. 574, and whether prospective or retrospective, see 2 Jarm. (8th edn), 696; *Strutt v Braithwaite*, 21 L.J. Ch. 609; *Hope v Potter*, 3 K. & J. 206; *Harley v Mitford*, 21 Bea. 280. "IN DEFAULT of such issue": see 3 Jarm. (8th edn), 1843 et seq.; *Re Lowman* [1895] 2 Ch. 348.

"Such member of the tenant's family" (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17) s.12(1)(g)) meant one member, and only one member could obtain a successor's statutory tenancy under this section (*Dealex Properties v Brooks* [1966] 1 Q.B. 542).

"Such mines" (Railway Clauses Consolidation Act 1845 (8 & 9 Vict., c.20) s.80)): see *Midland Railway v Miles*, 30 Ch. D. 634; see also 1845 Act s.78; *Joicey & Co v North Eastern Railway* [1906] 1 K.B. 195; reversed in House of Lords, nom. *Eden v North Eastern Railway* [1907] A.C. 400.

"Such order" (Judgments Act 1838 (c.110) s.15) meant a charging order *nisi*; therefore, when the order had been made absolute it could not be rescinded under that section (*Jeffryes v Reynolds*, 52 L.J.Q.B. 55; *Drew v Lewis* [1891] 1 Q.B. 450).

"Such other order as to the court shall seem meet", in the prayer of a petition for winding-up a company under supervision, enables the court (petitioner being willing) to make a compulsory order (*Re Electric & Magnetic Co*, 50 L.I. Ch. 491).

“Such other funds, charities and institutions as my executors in their absolute discretion shall think fit” (*Re Clarke*, 92 L.J. Ch. 629).

“Such other parties” (Supreme Court Costs Rules 1959 (No.1947) r.8). In the context the phrase meant parties other than the solicitor’s own client (*D. v D.* [1963] 1 W.L.R. 194, D.C.).

A gift of “such parts” of testator’s property as the legatee may desire, enables the legatee to take the whole; and if the gift embraces only a class of testator’s property, then the whole of such class may be appropriated by the legatee (*Arthur v Mackinnon*, 11 Ch. D. 385). See APPROPRIATE; PART; WHAT IS LEFT.

Power to let “such parts” of testator’s property “as have been usually granted or demised”: see *Doe d. Bligh v Colman*, 1 Bing. 28; see also ANY.

“Such general or quarter sessions” (Vagrancy Act 1824 (c.83) s.14) referred to the kind of court, and not the individuals constituting a particular sessions (*R. v Warwickshire*, 4 L.J.M.C. 62).

“Such a sum in every year as after deducting income tax for the time being payable in respect thereof will leave a clear sum of 2,000”: for the construction of such a bequest see *Re Bates* [1925] 1 Ch. 157.

“Such trusts as are hereinafter declared”: see *Hindle v Taylor*, 5 D.G.M. & G. 592; see also HEREIN.

“Such consent not to be withheld unreasonably”: see UNREASONABLY.

“Such directions”: see DIRECTIONS.

“Such prosecution”: see PROSECUTION.

“Such and the like trusts”: see LIKE.

The word “such” is frequently troublesome, and the superficially satisfying elision which it represents is often difficult to unravel: for a case in which it had to be ignored, see *Stone v Yeovil Corporation* (1876) 1 CPD 691, 701.

“In common usage, the phrase ‘such person’ is often employed to refer back to a class of person identified by reference to particular distinguishing features, without having to repeat those distinguishing features. The point may be too obvious to require illustration, but an example is to be found in the opinion of the court in *Donaldson*. Following the passage which I have quoted in paragraph [17] above, in which the First Division concluded that the regulations afford no protection to persons present in a workplace as visitors but not as workers, the court continued: ‘That does not mean that such persons are left unprotected. They continue to have the protection afforded to visitors to premises by the antecedent, and subsisting, law relating to occupiers’ liability.’ The distinguishing feature of ‘such persons’ as are referred to there is that they are present in a workplace as visitors but not as workers. The only distinguishing feature of ‘such person’ as is referred to in the inclusion provision that can be read out of the general provision is that such person is one to whom premises or part of premises have been made available as a place of work. There is nothing in the wording of regulation 2(1), in my opinion, to suggest an intention that someone, A, who is present in premises which have been made available to another person, B, as a place of work and are, therefore, B’s workplace, should enjoy the protection of the regulations for no reason other than that A happens to be at work there.” (*Brown v East Lothian Council* [2013] ScotCS CSOH 62.)

SUDDEN. A strike did not, of itself, create a “sudden and urgent necessity” within s.54 of the Poor Law Amendment Act 1834 (c.76) (*Att-Gen v Merthyr Tydfil* [1900] 1 Ch. 516).

“Sudden changes of direction, height, width and gradient”: these words in s.34(1)(a) of the Mines and Quarries Act 1954 (c.70) are concerned with the design of the road itself, and not with the equipment in the road, such as a conveyor belt which by projecting across a road reduced its effective height (*Lister v National Coal Board* [1970] 1 Q.B. 228).

See GRAVE.

SUE. A tortfeasor will be liable to make contribution to another tortfeasor under s.6(1)(c) of the Law Reform (Married Women and Tortfeasors) Act 1935 (c.30), if he “is, or would if sued have been, liable in respect of the same damage”. “Sued” here means sued to judgment so that contribution cannot be obtained from a public authority against whom an action had not been begun within the proper time limit (*Wimpey (George) & Co v BOAC* [1955] A.C. 169; *Hart v Hall & Pickles*; *Reyner (G.) & Co (Third Party)* [1969] 1 Q.B. 405).

“Sued jointly” (R.S.C. Ord.22 r.3(4)) only applies where there is one cause of action but several defendants; and not where separate causes of action exist (*Townsend v Stone Toms and Partners* [1981] 1 W.L.R. 1153).

The charterers of a ship that is the subject of an action in rem were being “sued” for the purposes of the 1968 Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and Sch.1 to the Civil Jurisdiction and Judgments Act 1982 (c.27) (*The Deichland* (1989) 133 S.J. 596).

See IF SUED.

SUE AND LABOUR. As to construction of the “sue and labour” clause in a marine insurance, see *Uzielli v Boston Insurance*, 15 Q.B.D. 11; *Lysaght v Coleman* [1895] 1 Q.B. 49; *The Pomeranian* [1895] P. 349; Arn. (13th edn), ss.22, 864–874. See also *Cunard S.S. Co v Marten* [1902] 2 K.B. 624; affirmed [1903] 2 K.B. 511; *Western Assurance v Poole* [1903] 1 K.B. 376; *Crouan v Stanier* [1904] 1 K.B. 87; *Marine Insurance Act 1906* (6 Edw. 7, c.41) s.78; SALVAGE; *British & Foreign Marine Insurance Co v Gaunt* [1921] 2 A.C. 41.

The “sue and labour” clause in a marine policy “is in substance a contract by which the underwriter agrees to pay the assured the expense he may reasonably and properly incur in preventing a loss which, if it occurred, would fall on the underwriter under the other clauses in the policy. Such a contract is not a contract of writer under the other clauses in the policy. Such a contract is not a contract of indemnity in any proper sense” (per Lindley L.J., *Johnstone v Salvage Association*, 19 Q.B.D. 458; citing *Kidstone v Empire Marine Insurance*, L.R. 1 C.P. 535; 2 C.P. 357, cited PARTICULAR AVERAGE; *Lohre v Aitchison*, 4 App. Cas. 755).

SUED. A person “is sued” within the meaning of arts 2 and 6 of the Lugano Convention on jurisdiction (see s.3A of the Civil Jurisdiction and Judgments Act 1982 (c.27)) when proceedings are instituted (*Canada Trust Co v Stolzenberg (No.2)* [2000] 3 W.L.R. 1376, HL).

SUFFER. An annuity, or other life interest, only enjoyable until the beneficiary shall “suffer” anything to deprive him of the right of receiving it, was forfeited by a garnishee order served on the trustees (*Bates v Bates* [1884] W.N. 129). That case was not followed in *Sutton v Goodrich*, 80 L.T. 765, if it covered moneys actually in the trustees’ hands; see *Re Beaumont*, 79 L.J. Ch. 744, cited BELONG; or by a judgment creditor obtaining a charging order (*Roffey v Bent*, L.R. 3 Eq. 759), or registering his judgment as a mortgage against the lands (*Re Moore*, 17 L.R. Ir. 549); or the appointment of a receiver (*Re Detmold*, 40 Ch. D. 585); or by a bankruptcy when the

act of bankruptcy is such as (under the old practice) neglecting to comply with a debtor's summons (*Ex p. Eyston*, 7 Ch. D. 145). But probably *Bates v Bates*, (above) may now be regarded as of no authority; for *Sutton v Goodrich*, (above) shows that the beneficiary's "right to receive" arises directly the money comes to the hands of the trustees (see also *Re Sampson* [1896] 1 Ch. 630, cited FORFEITURE), and a garnishee order on the trustees would be a nullity unless the money had come to their hands; and "the result is that a garnishee order cannot create a forfeiture" (per Farwell J., *Re Greenwood* [1901] 1 Ch. 887; *Re Clark*, 95 L.J. Ch. 325; cp. *Webb v Stenton*, 11 Q.B.D. 518, cited DEBT). See also *Re Sartoris* [1892] 1 Ch. 11, cited WOULD; but see *Ex p. Dawes*, 17 Q.B.D. 282, cited WOULD.

"Determinable life interest": an interest given to A with a condition for forfeiture if she should alienate or charge it or do or suffer any act whereby it might become vested in any other person was held not to be forfeited on A becoming an enemy within the Trading With the Enemy Act 1939 (c.89), by continuing to reside in France after that county became enemy territory. A had not "done" or "suffered" any act (*Re Hall* [1944] Ch. 46; *Re Harris* [1945] Ch. 316). See also *Re Gourjus Will Trusts* [1943] Ch. 24; *Re Baring's Settlement Trusts* [1940] Ch. 737; *Re Hatch* [1948] Ch. 592; *Re Oppenheim's Will Trusts* [1950] Ch. 633.

"Omit or knowingly suffer": see *Eastwood v Ashton* [1913] 2 Ch. 39.

"Suffer an injustice" within meaning of Law of Property Act 1925 (c.20) s.171(1): see *Re Freeman* [1927] 1 Ch. 479; *Re Greene* [1928] 1 Ch. 528.

"Anything suffered"; "that thing is suffered" (Crown Proceedings Act 1947 (c.44) s.10(2)). Where, during tests on nuclear weapons being carried out by the Atomic Energy Authority, serving soldiers suffered radiation injuries through the negligence of the scientists employed by the Authority in failing to give the soldiers proper advice as to their safety, the thing "suffered" was the actual exposure to radiation not the continuing acts or omissions of the scientists (*Pearce v Secretary of State for Defence* [1988] 2 W.L.R. 144; overruling *Bell v Secretary of State for Defence* [1986] Q.B. 322).

See also IS SUFFERING.

"Duly done or suffered": see DONE; PERMIT.

"Wilfully do or suffer": see WILFULLY.

See PERMIT; PERMISSION; ALLOW; OMISSION.

SUFFER OR PERMIT. See PERMIT.

SUFFERANCE. "There is a great diversity between a tenant at will and a tenant at sufferance; for tenant at will is alwaies by right, and tenant at sufferance entreth by a lawfull lease, and holdeth over by wrong. A tenant at sufferance is he that at the first came in by lawfull demise, and after his estate ended continueth in possession and wrongfully holdeth over" (Co. Litt. 57B). See hereon *Rouse's Case*, Tudor's L.C.R.P. 1.

A sufferance wharf is a wharf in the Port of London the limits of which were set out by an order or minute of the Commissioners of Customs dated May 13, 1789, amongst which are: Fenning's Wharf, Topping's Wharf, Chamberlain's Wharf, Cotton's Wharf, the Depot Wharf, Hay's Wharf, Beal's Wharf, Carpenter Smith's Wharf, Griffin's Wharf, Gun and Shot Wharf, Symon's Wharf, Pickle Herring Upper Wharf, Pickle Herring Lower Wharf, Mark Brown's Wharf, Davis' Wharf, Hartley's Wharf, and Butler's Wharf (11 Vict., c. xviii), on which see *Barber v Meyerstein*, L.R. 4 H.L. 317.

See PERMISSION; BY WHOSE.

SUFFICE

SUFFICE. See IT SHALL SUFFICE.

SUFFICIENCY. "Sufficiency" of investments to be "secured": see *Public Trustee v Blacker-Douglas* [1905] 1 Ir. R. 540.

SUFFICIENT. In Rivers Pollution Prevention Act 1876 (c.75) s.7 2nd proviso: see *Brook v Meltham* [1909] A.C. 438, cited SEWER. See also ADEQUATE.

"Sufficient in... character" (Education Act 1944 (c.31) s.8(1)(b)): see *Wood v Ealing LBC* [1967] Ch. 364).

See INSUFFICIENT.

SUFFICIENT CAUSE. "Sufficient cause" (Registration of Business Names Act 1916 (c.58) s.8(1)(a)). A mistaken belief that relief would be granted automatically on request was not "sufficient cause" for failing to register (*Watson v Park Royal (Caterers) Ltd* [1961] 1 W.L.R. 727).

The liquidation of a company was a "sufficient cause" under R.S.C. Ord.50 r.1(6) for not converting a changing order nisi over the company's land obtained by a judgment creditor into an order absolute (*Roberts Petroleum v Bernard Kenny* [1983] 2 W.L.R. 305).

There is "sufficient cause" under s.12 of the Extradition Act 1870 (c.52) for not conveying a person committed in custody out of the United Kingdom within two months if the delay in surrender of the person is due to the British Government's seeking assurances that the death penalty will not be imposed (*Re Soering* [1990] C.O.D. 162).

A French law which prohibited discovery which had never been used in England to justify the restriction of discovery and which had not prevented French companies in English commercial disputes from giving discovery so that there was no risk that an offence would be committed or that prosecution would ensue was not "sufficient cause" to revoke a discovery order under R.S.C. Ord.24 r.17 (*Partenreederei M/S "Heidelberg" (A Body Corporate) v Grosvenor Grain and Feed Co; The Heidelberg* [1993] 2 Lloyd's Rep. 324).

"Good and sufficient cause": see GOOD CAUSE.

"Sickness or other sufficient cause": see SICKNESS.

"Reasonable or sufficient cause": see REASONABLE.

Cp. SUFFICIENT REASON.

SUFFICIENT CONSIDERATION. "Valuable and sufficient consideration": see VALUABLE.

SUFFICIENT DEBT. A right in equity to a sum of money, though not a debt in law, is a "sufficient" debt to support a petition under Bankruptcy Act 1883 (c.52) s.125 (see Bankruptcy Act 1914 (c.59) s.130) (*Re Outram*, 63 L.J.Q.B. 308).

SUFFICIENT DISTRESS. It is submitted that goods available as a "sufficient distress" means goods of such value in the aggregate as may reasonably be estimated to be sufficient, when sold, to pay the rent due together with all expenses of levy and sale: see hereon *Parrey v Duncan*, 7 Bing. 243; *Inkop v Morchurch*, 2 F. & F. 501; *Gillam v Arkwright*, 16 L.T.O.S. 88. Cp. EXCESSIVE.

A tithe owner in estimating whether he had a "sufficient distress" (Tithe Act 1836 (c.71) s.82), had to include the prospective value of growing crops, although not capable of present realisation (*Ex p. Arnison*, L.R. 3 Ex. 56). See now as to recovery of tithe rent charge, Tithe Act 1891 (c.8) s.2.

SUFFICIENT EVIDENCE. A receipt in a deed or indorsed thereon was "sufficient evidence", in favour of a subsequent purchaser, of the payment of the consideration

(Conveyancing Act 1881 (c.41) s.55; see Law of Property Act 1925 (c.20) s.68); see thereon *Lloyd's Bank v Bullock* [1896] 2 Ch. 192.

See CONCLUSIVE EVIDENCE; EVIDENCE; PRIMA FACIE EVIDENCE; SATISFACTORY.

SUFFICIENT FACILITIES. See FACILITIES.

SUFFICIENT INCOME. See *Re Pedrotti*, 29 L.J. Ch. 92; distinguished by Farwell J., *Re Richards* [1902] 1 Ch. 76.

SUFFICIENT INDICATION. A defendant in a county court action, to which he had a defence under the Gaming Act 1892 (c.9) (see GAMING CONTRACT), pleaded the following special defence, "That the present action is null and void, and the defendant relies on the Gaming Act 1845 (c.109) s.18": held, that that was otherwise to "sufficiently indicate the nature of the defence" within County Court Rules 1903 Ord.10 r.18 (*Renton v King*, 21 T.L.R. 577). See STATUTORY; see also STATUTE OF LIMITATIONS.

SUFFICIENT INTEREST (R.S.C. Ord.53 r.3(7).) A respected environmental pressure group, with 2,500 supporters in the area affected by the application, who might otherwise have an effective means of bringing their concerns to the court and who sought an order of certiorari had "sufficient interest" in an application for judicial review under R.S.C. Ord.53 r.3(7) where the court should look at the nature of the applicant, the extent of his interest in the subject-matter of the application, the court had to look at the nature of the applicant, the extent of his interests in the issues raised, the remedy sought to be achieved and the nature of the relief sought (*R. v Pollution Inspectorate, Ex p. Greenpeace (No.2)* [1994] 4 All E.R. 329).

(Supreme Court Act 1981 (c.54) s.31(3).) Leave to make an application for judicial review would be refused if a person had no interest whatsoever in the subject-matter of the application and was no more than a meddlesome busybody (*R. v Monopolies and Mergers Commission, Ex p. Argyll Group* [1986] 1 W.L.R. 763 applied) (*R. v Pollution Inspectorate, Ex p. Greenpeace* [1994] 4 All E.R. 329).

The importance of the vindication of the rule of law, the significance of the issues raised, the likely absence of any other possible challenger, the nature of the breach of duty against which relief was sought and the prominent role of the applicant in giving advice guidance and assistance to aid were all factors to be considered when determining whether an applicant had sufficient interest (*R. v Inland Revenue Commissioners, Ex p. National Federation of Self-Employed and Small Businesses* [1982] A.C. 617; *R. v Secretary of State for Social Services, Ex p. Child Poverty Action Group* [1990] 2 Q.B. 544 and *R. v Secretary of State for Foreign and Commonwealth Affairs, Ex p. Rees-Mogg* [1994] Q.B. 552 applied) (*R. v Secretary of State for Foreign and Commonwealth Affairs, Ex p. World Development Movement* [1995] 1 W.L.R. 386).

SUFFICIENT INTIMATION. See *Cran v Watt*, 38 Sc. L.R. 593, cited SUCCESSIVE.

SUFFICIENT JUSTIFICATION. See INTERFERE.

SUFFICIENT LIGHTING. "Effective provision" of "sufficient and suitable lighting" (Factories Act 1961 (c.34) s.5(1)). These words impose an absolute duty on employers, which will be breached even by the mere failure of a light bulb just before the occurrence of an accident (*Davies v Massey Ferguson Perkins* [1986] I.C.R. 580).

SUFFICIENT PASTURE. The measure of what is sufficient pasture (*sufficientem pasturam quantum pertinet ad tenementa sua*, Statute of Merton, 20 Hen. 3, c.4), to be left by a lord of a manor when he makes an approvement is that amount which will be

SUFFICIENT

sufficient for the full enjoyment by all the commoners of all their existing rights, whether such rights are likely to be exercised or not (*Robertson v Hartopp*, 43 Ch. D. 484, in which case *Lake v Paxton*, 10 Ex. 196, and *Lascelles v Onslow*, 2 Q.B.D. 433 were questioned and not followed).

See PASTURE.

SUFFICIENT REASON. The “sufficient reason” which, under Common Law Procedure Act 1854 (c.125) s.11 (see Arbitration Act 1950 (c.27) s.4), would induce the court not to stay an action regarding matters which the parties have agreed shall be determined by arbitration, includes cases where fraud or immorality is charged and the person so charged objects to arbitration (*Russell v Russell*, 14 Ch. D. 471; *Barnes v Youngs* [1898] 1 Ch. 414), or where defendant’s object is delay (*Lury v Pearson*, 1 C.B.N.S. 639), or he has obtained time to plead on terms of accepting short notice of trial (*Smith v British Marine* [1883] W.N. 176), or where submission has been revoked (*Randell v Thompson*, 1 Q.B.D. 748), or the arbitrator chosen is not impartial (*Pickthall v Merthyr*, 2 T.L.R. 805). See also *Freeman v Chester Rural Council* [1911] 1 K.B. 783; *Bristol Corp v Aird* [1913] A.C. 241.

“Good and sufficient reason” for arrest of a ship (R.S.C. Ord.29 r.18 now Ord.75 r.7): see *The Crimdon* [1900] P. 171.

“Sufficient reason for bringing the action in the High Court” (County Courts Act 1934 (c.53) s.47(3)(a)): see *Finch v Telegraph Construction and Maintenance Co* [1949] 1 All E.R. 452.

“Good and sufficient reason” for lessor withholding assent to an assignment of a lease: see UNREASONABLY.

Cp. GOOD CAUSE; GOOD REASON; SUFFICIENT CAUSE.

SUFFICIENT REPAIR. See REPAIR.

SUFFICIENT SANITARY CONVENIENCE. Factory and Workshop Act 1901 (c.22) s.9: see *Tracey v Pretty* [1901] 1 K.B. 444, cited SANITARY.

SUFFICIENT SECURITY. (Companies Act 1985 (c.6) s.726(1).) “Sufficient security” for costs in this section does not mean complete security but security of a sufficiency, in all the circumstances of the case, to be just (*Innovare Displays v Corporate Booking Services* [1991] B.C.C. 174).

SUFFICIENT UNDERSTANDING. A child who could give instructions to a solicitor and make decisions as the need arose had “sufficient understanding” within the meaning of the Family Proceedings Rules 1991 (SI 1991/1247) r.9.2A to continue proceedings without a guardian *ad litem* or next friend (*Re H. (A Minor) (Guardian ad litem: Requirement)* [1994] 4 All E.R. 762).

SUFFICIENT WATER. When a charterparty provides that the ship shall “discharge in a dock as ordered on arriving, if sufficient water, or so near thereunto as she may safely get, always afloat”, the words “if sufficient water” “are introduced in the interest of the shipowner, and restrict the generality of the power to name a dock. The obligation of the shipowner is to proceed to the dock named if there is sufficient water to enter the dock when the order is given; and if there is not then sufficient water, the ship is not bound to discharge in the dock named” (per Cave J., *Allen v Coltart*, 11 Q.B.D. 782).

SUFFICIENT WAYLEAVE. See WAY.

SUFFICIENTLY. Leave to serve a writ out of the jurisdiction will not be granted unless it “sufficiently appear” to the court that the case is a proper one (R.S.C. Ord.11

r.4). The court must be satisfied that there is “a good arguable case” (*Vitkovice Horni a Hutni Tezirstvo v Korner* [1951] A.C. 869).

“Sufficiently and securely fenced” (Threshing Machines Act 1878 (c.12) s.1). A fence which had to be placed in position by a man engaged on other work each time a certain operation was started, was not “sufficiently” fenced (*Jones v Richards* [1955] 1 W.L.R. 444).

See SERVED; SUFFICIENT INDICATION.

SUFFRAGAN. “‘Suffragan’ is a word used in the Suffragan Bishops Act 1534 (c.14), and it signifies a titular bishop appointed to helpe and assist the bishop of the diocese in his spirituall function” (Termes de la Ley); “a vicegerent of a bishop” (2 INST. 79). See hereon Phil. Ecc. Law, 76–80.

“Suffragan Bishop”: Stat. Def., Church Property (Miscellaneous Provisions) Measure 1960 (8 & 9 Eliz. 2, No.1) s.28; Clergy Provisions Measure 1961 (No.3) s.46(1).

SUGAR. Stat. Def., Sugar Industry (Reorganisation) Act 1936 (c.18) s.32(1); Customs and Excise Act 1952 (c.44) s.132(4); Finance Act 1968 (c.44) s.58(5); Alcoholic Liquor Duties Act 1979 (c.4) ss.37(5), 50(4), 52(4).

SUGDEN’S ACTS. Illusory Appointments Act 1830 (c.46).

Debts Recovery Act 1830 (c.47).

Infants Property Act 1830 (c.65).

To improve Chancery Practice: Contempt of Court Act 1830 (c.36); Illusory Appointments Act 1830 (c.46); Debts Recovery Act 1830 (c.47); Transfer of Trust Estates Act 1830 (c.60); Contempt of Court Act 1832 (c.58).

Judgments Act 1839 (c.11), amended by Judgments Act 1855 (c.15).

See also ST LEONARDS’ (LORD) ACTS.

SUICIDE. “Suicide” does not, necessarily, involve the idea of a felonious self-destruction. To “commit suicide” is for a person voluntarily to do an act (or, as it is submitted, to refrain from taking bodily sustenance), for the purpose of destroying his own life, being conscious of that probable consequence, and having at the time sufficient mind to will the destruction of life (*Clift v Schwabe*, 3 C.B. 437). In that case the meaning of this word is elaborately discussed, and its history is very learnedly treated by Pollock C.B., who, however, was in the minority of the Exchequer Chamber in upholding the direction of Cresswell J., at the trial that “suicide” meant the voluntary self-destruction of a man who at the time was “able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent”. The opposite view, and the one which received the sanction of the majority of the court, is thus expressed by Patteson J., “Now the words themselves”—words appearing in a life policy, and exonerating the insurers if the insured should “commit suicide”—“are large enough to embrace all self-destruction as well as self-murder; not, indeed, as was admitted in *Borrodaile v Hunter* (12 L.J.C.P. 225), to embrace cases of mere accident, or of insanity extending to unconsciousness of the act done or of its physical consequences—because such cases, although comprehended in the very words themselves, cannot be considered to have been in the contemplation of the contracting parties—but clearly embracing an act of self-destruction committed by a person who was aware of the probable consequences of the act, and intended that consequence to follow”. *Clift v Schwabe* was followed in *Dufaur v Professional Life Assurance*, 27 L.J. Ch. 817. It was also discussed and approved in *Re Davis* [1968] 1 Q.B. 72.

As to construing a clause in a life policy against suicide as a condition precedent to recovering on the policy even by its assignee, see *Ellinger v Mutual Life Insurance* [1904] 1 K.B. 832; [1905] 1 K.B. 31; cp. *Harvey v Ocean Accident Corp* [1905] 2 Ir. R. 1, cited ACCIDENT.

See DIE BY HIS OWN HANDS; FELO DE SE; MURDER.

SUING. See SUE AND LABOUR.

SUIT. Though it has been said that “suit” is a term of wider signification than “action”, and may include proceedings on a petition (*Re Wallis*, 23 L.R. Ir. 7; see DECREE; but see *Guthrie v Fisk*, 3 B. & C. 183, cited SUE), yet, generally speaking, the two words are very nearly synonymous (see Judicature Act 1873 (c.66) s.100; Judicature Act 1925 (c.49) s.225) and (except by an interpretation clause) neither includes a petition (see SUE; ACTION). So, a mortgagee’s petition for payment out of a fund in court, was not a “suit” to recover interest, within Real Property Limitation Act 1833 (c.27) s.42 (cp. Limitation Act 1939 (c.21) s.17) (*Edmunds v Waugh*, L.R. 1 Eq. 418; *Re Marshfield*, 34 Ch. D. 721; but see *Re Stead*, 2 Ch. D. 713); still less was the mortgagee’s right of retainer out of proceeds of sale such a suit (*Re Marshfield*, above). *Edmunds v Waugh* and *Re Marshfield* were approved, while *Re Stead* was distinguished, in *Re Lloyd* [1903] 1 Ch. 385. See RECOVER.

As to the effect of “action” and “suit” being used together, see *Sutton v Sutton*, 22 Ch. D. 511, cited CHARGED UPON.

“Suit” (Customs Consolidation Act 1876 (c.36) s.257). A claim by the Commissioners of Customs and Excise to have certain documents they had seized condemned by the court, was not a “suit” within the meaning of the section (*Commissioners of Customs and Excise v Sokolow’s Trustee* [1954] 2 Q.B. 336).

“Suit” (Hague Rules art.3 r.6) includes an arbitration (*The Merak* [1965] P. 223).

(Hague Rules art.3 r.6.) A “suit” encompassed an action in tort or contract (*Anglo Irish Beef Processors International v Federated Stevedores Geelong* [1997] 1 Lloyd’s Rep. 207).

Stat. Def., Crown Suits etc. Act 1865 (c.104) s.6.

See CRIMINAL SUIT; FRESH SUIT; PROCEEDING.

SUITABLE. Wheels “suitable only to run on the rail” of a tramway (Tramways Act 1870 (c.78) s.62): see *Manchester v Andrews*, 5 T.L.R. 470.

“Suitable” (Fertilisers and Feeding Stuffs Act 1926 (c.45) s.1): see *Pulling v Lidbetter Ltd*, 93 L.J.K.B. 542.

Road and Rail Traffic Act 1933 (c.53) s.11: meant something more than adequate when considering whether “suitable transport facilities” existed and whether they were or would have been in excess of requirements; this was to be considered in relation to current industrial and commercial conditions (*Great Western and London, Midland & Scottish Railways v Smart*, 24 Ry. & Can. Tr. Cas. 273).

“Is suitable” (Factories Act 1937 (c.67) s.54(2), now Factories Act 1961 (c.34) s.70(2)) means that the bakehouse “is suitable” at the time that the appeal comes before the court (*Fulham BC v A.B. Hemmings Ltd* [1940] 2 K.B. 669).

“Suitable accommodation for clothing” (Factories Act 1937 (above) s.43(1), now Factories Act 1961 s.59(1)); the risk of theft must be considered in deciding the suitability of accommodation (*McCarthy v Daily Mirror Newspapers* [1949] 1 All. E.R. 801).

"Sufficient and suitable accommodation in the way of sanitary convenience" (Factory and Workshop Act 1901 (1 Edw. 7, c.22) s.9; see now Factories Act 1961 (c.34) s.7): see *Tracey v Pretty* [1901] 1 K.B. 444, cited SANITARY.

"Suitable goggles... to protect the eyes" (Factories Act 1937 (c.67) s.49, now Factories Act 1961 (c.34) s.65), means well adapted for the process under consideration and well adapted for the wearer in that they must fit him (*Daniels v Ford Motor Co* [1955] 1 W.L.R. 76). Goggles, to be "suitable" within this section, must be effective to keep foreign bodies out of the workers' eyes in all reasonably foreseeable circumstances, having regard to the nature of the job (*Rodgers v Blair (George) & Co* (1971) 11 K.I.R. 391).

"Suitable guard rails" (Building (Safety, Health and Welfare) Regulations 1948 (No.1145) reg.27(2)(a)) does not necessarily mean two or more rails, one above the other. A single guard rail on a stair might, in certain circumstances, be sufficient (*Astell v London Transport Board* [1966] 1 W.L.R. 1047).

"Suitable land for the purpose of allotments" (Small Holdings and Allotments Act 1908 (c.36) s.25(2)): see *Woodford Land & Building Co v Woodford Urban DC*, 19 L.G.R. 559.

"Other suitable material", in a patent specification: see *Ralston v Smith*, 11 H.L. Cas. 223; in a like connection, "any other suitable driving motion": see *Marsden v Moser*, 73 L.T. 667.

"Suitable to be retained as heirlooms": see *Re Smith-Bosanquet*, 53 S.J. 430.

A container is "suitable" (Road Traffic Act 1962 (c.59) s.2(5), now Road Traffic Act 1972 (c.20) s.10(6) as amended) for a blood specimen if the specimen, having been carried in it, can be analysed (*Langridge v Taylor* [1972] R.T.R. 157), and the mere fact that the character of the specimen has changed does not necessarily mean that the container was unsuitable (*Clark v Stenlake* [1972] R.T.R. 276). Where the lid of a defendant's blood specimen container is insecurely put on by the constable, so that it is loose when it reaches the analyst, it is not a "suitable container" (*Hawkins v Ebbutt* [1975] R.T.R. 363). Nor is one from which alcohol could have leaked (*R. v Sodo* [1975] R.T.R. 357).

"Goods of a kind suitable for use as parts of" (Finance (No.2) Act 1975 (c.45) s.17 Sch.7 Group 3). Here "suitable" means "designed" or "adapted for" (*Customs and Excise Commissioners v Mechanical Services (Trailer Engineers)* (1979) 1 W.L.R. 305).

"Suitable alternative... accommodation" (Land Compensation Act 1973 (c.26) s.39(1)). Temporary accommodation, without a promise of permanent accommodation to follow, and which could not accommodate all the members of the family was still held to be "suitable" within the meaning of this section (*R. v East Hertfordshire DC, Ex p. Smith* (1991) 23 H.L.R. 26).

"Suitable accommodation" (Housing Act 1985 (c.68) s.69, as amended by s.14(3) of the Housing and Planning Act 1986 (c.63)). In determining whether an offer of accommodation was an offer of "suitable accommodation" the authority should have regard not only to the accommodation itself, but also to the individual circumstances of the homeless person and her family (*R. v Brent LBC, Ex p. Omar* (1991) 23 H.L.R. 446). In assessing the suitability of accommodation a local authority could separate medical needs from social needs by those qualified in each area, provided that the ultimate decision was the result of a composite assessment of all relevant factors (*R. v Lewisham LBC, Ex p. Dolan* (1992) 25 H.L.R. 68). An offer of accommodation was

SUITABLE

not “suitable” where the authority had failed to take into account material available to them about the extent of racial harassment in the vicinity of the premises (*R. v Tower Hamlets London Borough, Ex p. Subhan (Abdul)* (1992) 24 H.L.R. 541). A local authority failed to make an offer of suitable accommodation in a case where the applicant was required to accept or refuse the offer before a potentially relevant factor, medical evidence relating to the applicant’s children, had been assessed by the authority (*R. v Wycombe DC, Ex p. Hazeltine, The Times*, March 8, 1993). The provision of “suitable” accommodation for the purposes of this section could entail more than one short-term stay, so that the intended final accommodation could be reached in stages (*R. v Brent LBC, Ex p. Macwan, The Times*, April 6, 1994).

“Suitable accommodation”: whether accommodation was “suitable” within the meaning of s.206(1) of the Housing Act 1996 (c.52) required an assessment of all the qualities of the accommodation in the light of a homeless person’s needs and those of his family. Location could certainly be relevant (*R. (Sacupima and others) v Newham LBC* [2001] 1 W.L.R. 563, CA).

“The word ‘suitable’ is an empty vessel which is filled with meaning by context and background.” (*R. (Quintavalle) v Human Fertilisation Authority* [2005] UKHL 28 per Lord Hoffmann (para.33).)

“Suitable alternative accommodation” (Rent Act 1977 (c.42) Sch.15 Pt IV). Where the tenant of a flat in a quiet road in Hampstead was offered alternative accommodation on a busy commercial road in Kilburn it was held that the alternative accommodation was not “suitable” within the meaning of this schedule (*Dawncar Investments v Plews* (1993) 25 H.L.R. 639).

“Suitable arrangements” (Education Act 1944 (c.31) s.39). “Suitable” refers to the suitability of the transport arrangements, not the suitability of the school (*R. v East Sussex CC, Ex p. D.* [1991] C.O.D. 374).

“Suitable available vacancy”: see AVAILABLE.

“Suitable home”: see HOME.

“Suitable residence and holding”: see RESIDE.

“House suitable for occupation by persons of the working classes”: see HOUSE.

“Suitable to”: see CORRESPOND.

“Sufficient and suitable lighting”: see SUFFICIENT.

See also LEGITIMATE.

SUITABLE ACCOMMODATION. As to determining what accommodation is “suitable” for the purposes of the Housing Act 1996, see *Harouki v Kensington and Chelsea Royal London Borough Council* [2007] EWCA Civ 1000.

For the purposes of s.193(2) of the Housing Act 1996, suitable accommodation need not be permanent (*R. (Aweys) v Birmingham City Council; Birmingham City Council v Ali* [2009] UKHL 36).

See also *Codona v Mid-Bedfordshire District Council* [2005] LGR 241 at [33]–[37].

SULING. See SWOLING.

SULLERYE. “Signifieth a plow-land” (Co. Litt. 5A). See PLOWLAND.

SULLINGS. “Sullings are taken for elders”, i.e. elder trees (Co. Litt. 4B).

SUM. A “sum” does not necessarily mean an amount expressible in some coin of the realm; e.g. the sale of each copy of a copyright painting is a separate offence (*Ex p. Beal*, L.R. 3 Q.B. 387, cited COPY), and “for every such offence” the offender forfeits “a sum not exceeding £10” (Fine Arts Copyright Act 1862 (c.68) s.6—cp. now Copyright Act 1911 (c.46) s.11); that does not mean that the minimum penalty for

every offence must be one farthing, for that would make the penalty to fluctuate according to the actual coinage of the country, and there is nothing in the enactment to indicate that the "sum" must have an equivalent in a coin of the realm; therefore, where the proof was that there had been sold 1,012,600 infringing copies, that did not involve penalties of, at least, a like number of farthings, and it was held that the justice of the case was met by a penalty of an aggregate of fractions amounting to £200 (*Hildesheimer v Faulkner* [1901] 2 Ch. 552, overruling on this point *Ellis v Marshall*, 64 L.J.Q.B. 757, *Baschet v London Illustrated Standard Co* [1900] 1 Ch. 73).

"Sum" in Trading With the Enemy Amendment Act 1914 (c.12) s.2(1): see *Re Hallenstein* [1922] 1 Ch. 355.

The words "any sum due at the passing of this Act" in s.8(1) of the Distribution of German Enemy Property Act 1949 (c.85) were not appropriate to describe a claim for unliquidated damages for breach of covenant, because there was no sum due until it was established that there was in fact a breach of covenant and, that being established, the amount had been quantified by judgment (*Re Collbran* [1956] Ch. 250).

"Provided the sum or damages sought to be recovered shall not exceed £50"; "sum", in such a connection, means "debt" (*Joule v Taylor*, 7 Ex. 58).

A bequest of "the sum of" a named amount in a named investment, is to some extent an indication that the bequest is demonstrative; whilst the absence of such phrase rather indicates that the bequest is specific (per North J., *Re Pratt* [1894] 1 Ch. 491; commenting on *Mytton v Mytton*, L.R. 19 Eq. 30).

"Sum of money", in regard to ad valorem stamp duty, will generally mean the principal sum, not a sum compounded of principal and interest (*Pruessing v Ing*, 4 B. & Ald. 204).

"Sum of money", (Courts (Emergency Powers) Act 1914 (c.78) s.1(1)): see *Dobb v Henry Dobb Ltd* [1918] 1 Ch. 443.

As to the meaning of the phrase "sums of money secured on mortgage of any of my freehold and leasehold properties", in a will, see *Re Beirnsstein*, 94 L.J. Ch. 62.

"Sum of money at stated periods" (Stamp Act 1891 (c.39) Sch.I, "Bond"). A covenant to pay a specified sum of money on the first of each month was held to be a covenant to pay a sum of money at stated periods as distinguished from an annuity (*Hennell v Inland Revenue Commissioners* [1933] 1 K.B. 415).

A husband's default in paying school fees under a maintenance order is a "default in payment of a sum of money" (Debtors Act 1869 (c.62) s.4) (*Farrant v Farrant* [1957] P. 188).

"Sum available for distribution": as to the construction of a clause in a service agreement providing for a commission based on "the sum available for distribution" by the employer company in each year, see *Edwards v Saunton Hotel Co*, 168 L.T. 30.

"Lump sum" (Finance (New Duties) Act 1916 (c.11) s.1(4)). "Sum" had two connotations, that of an aggregate of currency tokens, e.g. so many pounds and shillings, and that of an addition of individual amounts to create a sum (*Customs and Excise Commissioners v Queen's Park Rangers Football & Athletic Club* [1952] 2 Q.B. 918).

"Sum to be paid into the Supreme Court" (Leasehold Reform Act 1967 (c.88) s.27(5)). In computing this figure arrears of rent which are statute barred are to be disregarded (*Re Howell's Application* [1972] Ch. 509).

"Sum insured" in a fire insurance policy: see *Kennedy v Boolarra Butter Factory Pty* [1953] V.L.R. 548.

(Limitation Act 1980 (c.58) s.9(1).) Compensation for compulsory purchase even if not quantified was a "sum recoverable by virtue of . . . enactment" and so subject to a six year limitation period under s.9(1) (*Hillingdon LBC v ARC Ltd* [1998] 1 W.L.R. 174).

Default in "payment of a sum of money": see PAYMENT.

"Net sum": see CLEAR.

See PERIODICAL; REASONABLE SUM; RECOVER; SUMS.

SUM ADJUDGED. The "sum adjudged" to be paid on a conviction, "refers to the sum in which the party is convicted, and does not include the costs" (per Crompton J., delivering the judgment, *R. v Warwickshire Justices*, 25 L.J.M.C. 119). This also applied to s.50 of the Metropolitan Police Courts Act 1839 (c.71) (*R. v London Quarter Sessions Ex. p. Bowes* [1951] 1 K.B. 383). But in the Summary Jurisdiction Act 1879 (c.49) s.49, "the expressions 'sum adjudged to be paid by a conviction' and 'sum adjudged to be paid by an order', respectively, include any costs adjudged to be paid by the conviction or order, as the case may be, of which the amount is ascertained by such conviction or order". See ASCERTAINED; OPINION. See also *R. v Novis* [1905] 2 K.B. 456, cited FINE.

"Sum adjudged" (Public Health Act 1848 (c.63) s.135; cp. Public Health Act 1875 (c.55) s.269) meant the sum in respect of which the adjudication was made, i.e. the sum adjudicated upon (*Ricardo v Maidenhead*, 2 H. & N. 257).

Stat. Def., Criminal Justice Administration Act 1914 (c.58) s.41; Money Payments (Justices Procedure) Act 1935 (c.46) s.15(e); Criminal Justice Act 1948 (c.58) s.80(1).

SUM CERTAIN. "Sum certain" (Civil Procedure Act 1833 (c.42) s.28; cp. Law Reform (Miscellaneous Provisions) Act 1934 (c.41) s.3) was probably not construed so strictly as "certain time"; semble, it was immaterial how the "sum" became "certain", it being "certain" when ascertained under the written instrument (*Geake v Ross*, 44 L.J.C.P. 315; *Mildmay v Methuen*, 3 Drew. 91; but see *Hill v South Staffordshire Railway*, L.R. 18 Eq. 154, and per Jessel M.R., *Ward v Eyre*, 49 L.J. Ch. 659; but see *Alexandra Docks & Railway Co v Taff Vale Railway Co*, 28 T.L.R. 163, in which it was held that there might be a sum certain within the section although a set-off might be pleaded which might reduce the amount to which the plaintiff might ultimately be found to be entitled; see DEMAND; LIQUIDATED DEMAND). But an assessment under Lands Clauses Consolidation Act 1845 (8 & 9 Vict., c.18) s.68 did not make the amount of it a "sum certain" within the section, so as to carry interest (per Collier County Court Judge, *Evans v London & North Western Railway*, 31 S.J. 333; see also *Re Peruvian Guano Co*, 63 L.J. Ch. 822). Nor did the phrase cover a sum which was liable to subsequent adjustment, for "sum certain" "must be a certain sum which is due absolutely and in all events from the one party to the other, though it may not come, strictly speaking, within the term 'debt'" (per Herschell C., *London, Chatham & Dover Railway v South Eastern Railway* [1893] A.C. 429).

A sum payable by a bill of exchange or promissory note was a "sum certain", within the Bills of Exchange Act 1882 (c.61), "although it is required to be paid—

With interest.

By stated instalments.

By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill" or note (ss.9, 89).

A cheque for a specified number of francs was a bill of exchange for a "sum certain" or which could be made certain within s.9(1) of the Bills of Exchange Act 1882, and the rate at which the value of the francs had to be calculated was that prevailing on the day of the trial: see *Cohn v Boulken*, 36 T.L.T. 767; not followed in *Peyrae v Wilkinson* [1924] 2 K.B. 166.

See CERTAIN TIME; DEFINITE.

SUM CLAIMED. "Sum claimed" (Merchant Shipping Act 1850 (c.104) s.460—see Merchant Shipping Act 1894 (c.60) s.547) means "the sum asked before the proceedings commenced" (per Dr Lushington, *The William and John*, 32 L.J.P.M. & A. 103).

"Sum in dispute" (Merchant Shipping Act 1850 s.464; see Merchant Shipping Act 1894 s.549) does not mean the sum awarded by justices, and appealed against, but means the sum originally in litigation (*The Andrew Wilson*, 32 L.J.P.M. & A. 104). See also *The Generous*, L.R. 2 A. & E. 57.

SUM DUE. (Insolvency Act 1986 (c.45) s.411; Insolvency Rules 1986 (SI 1986 No.1925) reg.13.12.) "Sum due" included a claim for unliquidated damages in tort (*Soden v British and Commonwealth Holdings Plc* [1997] 2 W.L.R. 206).

SUM EMPLOYED. "Sum employed as capital": see CAPITAL EMPLOYED.

SUM IN DISPUTE. See SUM CLAIMED.

SUM OF MONEY. See SUM.

SUM OWED. (Consumer Credit Act 1974 (c.39) ss.129, 136.) The "sum owed" related to every sum owed under the loan agreement (*Southern and District Finance v Barnes*, *The Times*, April 19, 1995).

SUM PAID. "Sum paid or payable on the death of the deceased... under any contract of assurance or insurance" (Fatal Accidents (Damages) Act 1908 (c.7) s.1) did not include a contributory pension payable to a widow under the Widows', Orphans' and Old Age Contributory Pensions Act 1925 (c.70): see *Carling v Lebbon*, 96 L.J.K.B. 515. See also Law Reform (Personal Injuries) Act 1948 (c.41) s.2.

SUM PERIODICALLY. See PERIODICAL.

SUM PREVIOUSLY OFFERED. See PREVIOUSLY.

SUM RECOVERED. See RECOVER; SUM.

SUM USUALLY EXPENDED. "Sum usually expended" for "implements, utensils, or articles employed for the purposes of the trade" (Income Tax Act 1918 (c.40) r.3(d) of Rules applicable to Cases I and II, Sch.D): see *Hyam v Inland Revenue Commissioners* (1929) S.C. 384.

SUMMARILY. Where any Act (coming into operation after December 31, 1879) prescribed that an offence was to be prosecuted, or a fine was to be recovered, "summarily, or on summary conviction", or that money was to be recovered "before a court of summary jurisdiction", or "summarily", or "in a summary manner", in either case the summary jurisdiction Acts applied (Summary Jurisdiction Act 1879 (c.49) s.51) Cp. Magistrates' Courts Act 1952 (c.55) s.50.

In disputes as to salvage, under Merchant Shipping Act 1894 (c.60), which are to be determined "summarily" (s.547), that means, in England, the county court; in Scotland, the sheriff's court; in Ireland, the arbitration by two justices, or a stipendiary magistrate, or a recorder, or the chairman of quarter sessions (subs.(4)).

Offences under Merchant Shipping Act 1894, punishable by imprisonment for not exceeding six months or by fine not exceeding £100, "shall be prosecuted summarily in manner provided by the Summary Jurisdiction Acts" (s.680(1)(b)), that did not

SUMMARY

deprive a culprit of the opinion to be tried by a jury given by Summary Jurisdiction Act 1879 (c.49) s.17; see Magistrates' Courts Act 1952 s.25 (*R. v Goldberg* [1904] 2 K.B. 866). See PROSECUTE.

Civil matters may be disposed of "in a summary manner" under R.S.C. Ord.59 r.8, now Ord.17 r.5, though the subject-matter exceeds £50 in value (*Harbottle v Roberts* [1905] 1 K.B. 572): see hereon *Bryant v Reading*, 17 Q.B.D. 128. The word "summarily" in r.5(2) does not mean that the master can determine the matter forthwith but only that he can determine it without directing an issue (*Davis (PJB) Manufacturing Co v Fahn, Fahn (Claimant)* [1967] 1 W.L.R. 1059).

SUMMARY CONVICTION. A summary conviction is a conviction before a court of summary jurisdiction, or, in other words, one under the Summary Jurisdiction Acts:

Where an offence was punishable by more than three months' imprisonment on summary conviction the maximum penalty was not increased by the accused's election to be tried by jury. Six months' imprisonment "on summary conviction" (Magistrates' Courts Act 1952 (c.55) s.25) means on conviction in proceedings begun in a court of summary jurisdiction (*R. v Bishop* [1959] 1 W.L.R. 931).

"Summary conviction" (Powers of Criminal Courts Act 1973 (c.62) s.21). Action taken by justices under s.12(1) of the Contempt of Court Act 1981 (c.49) to commit to custody persons who wilfully interrupted the proceedings of the court did not amount to a summary conviction for the purposes of this section (*R. v Newbury Justices, Ex p. du Pont and Others* (1984) 78 Cr.App.R. 255).

SUMMARY JURISDICTION. See COURT OF SUMMARY JURISDICTION.

SUMMARY MANNER. See SUMMARILY.

SUMMARY OFFENCE. Stat. Def., Criminal Law Act 1977 (c.45) s.64; Interpretation Act 1978 (c.30) Sch.1.

SUMMER TIME. See Summer Time Act 1925 (c.64) s.1.

SUMMONED. See CONVENE.

SUMMONS. A summons is the process by which a proceeding is commenced or by which (generally) a step therein is taken, e.g. a chamber summons, a county court summons, a magistrate's summons; see also ORIGINATING; WRIT OF SUMMONS. Cp. WARRANT.

"Summons", by itself, will probably not include a writ of summons (*Towne v Limerick SS Co*, 5 C.B.N.S. 730).

SUMS. See MONEY; MONEY DUE, SUM.

SUNBED. Stat. Def., an electrically-powered device designed to produce tanning of the human skin by the emission of ultra-violet radiation (Sunbeds (Regulation) Act 2010).

SUNDAY. In the early days of Queen Elizabeth it was held that whether a day is a Sunday, or not, is triable "per paies ou calend" (Dyer, 182, pl. 55), but later on in the same reign it was ruled that the almanac was sufficient (*Page v Faucet*, Cro. Eliz. 227).

"Sunday" (Sunday Closing (Wales) Act 1881 (c.61) s.1) had only its ordinary meaning, and did not include Christmas Day (*Forsdike v Colquhoun*, 11 Q.B.D. 71).

As to when Sunday is included or excluded in a computation of time: see DAYS, on which see *Ex p. Hicks*, L.R. 20 Eq. 143; *Re Gilbert*, 4 Ch. D. 794; HOLIDAY; see also DAILY. So, semble, a notice to quit may be served on a Sunday (*Sangster v Noy*, 16 L.T. 157), and rent may be paid on Sunday, and if due on Sunday and not then paid, it

may be distrained for the next day (*Child v Edwards* [1909] 2 K.B. 753). But the rule against service of a writ on Sunday is so strong that its invalidity cannot be waived (*Taylor v Phillips*, 3 East 155).

As to Sunday Observance Act 1977 (c.7): see INSTITUTED; LABOURER; NECESSITY; ORDINARY CALLING, on which see *Bloxsome v Williams*, 3 B. & C. 232; OTHER; PROCESS; TRADE; WORKMAN.

As to Sunday Observance Act 1780 (c.49): see DISORDERLY; ENTERTAINMENT; KEEPER; MASTER; PROFANENESS. Cp. LAWFUL DAY.

Though Sunday Observance Prosecution Act 1871 (c.87) s.1 prohibited a prosecution under the Sunday Observance Act 1677, except with the consent "in writing" of the chief officer of police, or two justices, or a stipendiary magistrate, yet that prohibition did not apply to a prosecution against a baker for selling bread on Sunday, contrary to 3 Geo. 4, c. cvi s.16 (an Act regulating the sale of bread in London) (*R. v Mead* [1902] 2 K.B. 212).

"Sunday Observance Acts 1625 to 1780": Stat. Def., Sunday Entertainments Act 1932 (c.51) s.5.

As to Sunday being originally a feast day and subsequently assuming the rigidity of the Hebrew Sabbath, see 185 Quarterly Review, 36.

"Traffic on Sunday": see TRAFFIC.

SUNDAY SCHOOL. In Sunday and Ragged Schools (Exemption from Rating) Act 1869 (c.40) s.2, "'Sunday school' shall mean any SCHOOL used for giving religious education gratuitously to children and young persons on Sunday, and, on weekdays, for the holding of classes and meetings in furtherance of the same object, and without pecuniary profit being derived therefrom". See *Rogers v Lewisham BC* [1951] 2 K.B. 768. Cp. RAGGED SCHOOL.

SUNK. See SINK.

SUNKEN WRECK. Part of the frame of a ship sunk beneath the surface of the sea and partially embedded in the ground, and also a quantity of iron ore that had formed part of the cargo of a ship, are "sunken wreck" within the collision clause of a marine insurance (*The Munroe* [1893] P. 248). See WRECK.

SUNRISE. See "Daytime", under DAY.

SUNSET. The court does not take judicial notice of the almanac for determining what was the hour of sunset on a particular day; that is a fact to be proved (*Collier v Nokes*, 2 C. & K. 1013). "Sunset", in the Regulations for Lighting-up Bicycles (Local Government Act 1888 (c.41) s.85) meant sunset according to the particular locality; not according to Greenwich or Dublin Mean Time as provided by the statutory definition of "time" (*Gordon v Cann*, 68 L.J.Q.B. 434).

See also "Daytime", under DAY.

SUPERANNUATION. Police Superannuation Act 1848 (c.14) ss.2, 3: see *Hobson v Hull*, 24 L.J.Q.B. 251.

SUPERANNUATION BENEFITS. Stat. Def., "annual superannuation allowances, gratuities and periodical payments payable on retirement, death or incapacity, and similar benefits" (National Health Service Act 2006 s.235(4)).

SUPERANNUATION SCHEME. Stat. Def., Wages Councils Act 1979 (c.12) s.28.

SUPERCARGO. A supercargo is a person employed to go with a cargo on voyage and oversee it and dispose of it to the best advantage (Jacob); and, "unless his authority be expressly or impliedly restrained, must, from the nature of his

SUPERFAMILY

employment, be invested with a complete control over the cargo, and everything which immediately concerns it; that must embrace its destination” (per Ellenborough C.J., *Davidson v Gwynne*, 12 East, 396).

SUPERFAMILY. “The expression ‘superfamily’ does not appear to have a precise meaning, as Jacob LJ observed in the Court of Appeal: [2010] RPC, para.73. As he explained, the general idea is that it includes not only very closely homologous compounds but also those with rather less homology. The contrast is between a closely knit family with known activities, and a wider family with a variety of different, pleiotropic effects: cousins, second cousins, distant uncles and so on. The same contrast between two extremes is to be found in para.22 of the TBA’s judgment. But the important point that emerges from its comment that it was dealing with a superfamily is to be found in the last two sentences. This case is not one where the different, pleiotropic effects are so poorly understood that it is plain that no effect can be assigned to a new member without relying on some experimental data. That is not true of the TNF ligand superfamily as it lies between the two extremes.” (*Human Genome Sciences Inc v Eli Lilly and Company* [2011] UKSC 51.)

SUPERFICIAL YARD. As used in a building contract: see *Symonds v Lloyd*, 6 C.B.N.S. 691.

See YARD.

SUPERINTEND. See MANAGE.

SUPERIOR COURT. It is submitted that “Superior Court” is to be construed historically and that, in its primary meaning, it connotes a court having an inherent jurisdiction, in England, to administer justice according to law, as and being a part of, or descended from, and as exercising part of the power of, the *Aula Regia*, established by William the First, which had universal jurisdiction in all matters of right and wrong throughout the kingdom, and over which, in its early days, the King presided in person (3 Bl. Com. 37–60). An Inferior Court is one, limited as to its area and also limited, as to its jurisdiction and powers, to those matters and things which are expressly deputed to it by its document of foundation or by a legal custom (*London v Cox*, L.R. 2 H.L. 239, cited INFERIOR COURT, and the cases there cited by Willes J.).

Before the Judicature Acts, the more principal Superior Courts were “the Lords House in Parliament, the Chancery, King’s Bench, Common Pleas, and Exchequer” (Bac. Ab. *Courts*, D, 1; see also 3 Bl. Com. 37–46). As there are degrees in the peerage yet each member is a peer, so of the Superior Courts. At one time, error lay from the C.P. to the K.B., but that did not “in the slightest degree interfere with the doctrine that the C.P. was a Superior Court” (per Erle C.J., *Ex p. Fernandez*, 10 C.B.N.S. 28). So, diversity of jurisdiction in some matters cannot be material, for the above mentioned well-known Superior Courts had, in important matters, special and separate jurisdictions without affecting their status as Superior Courts. Neither does a limited area, of itself, prevent a court from being Superior; for the Palatine Courts are Superior Courts, “originally belonging, as they did, to the Lords Palatine to whom the Crown had granted their counties, to hold to them and their heirs ‘ita libere ad gladium sicut ipse Rex tenebat Angliam ad Coronam’, and who possessed *jura regalia* there”, and (herefor citing Gilbert’s Hist. of C.P. 190) “were Superior Courts, within their jurisdiction, in as ample a manner as a Court of Westminster” (per Willes J., *Ex p. Fernandez*, 30 L.J.C.P. 339).

Reverting to and in confirmation of the submission in the first paragraph of this definition it is to be observed that the Court of Assize is a Superior Court (*Ex p.*

Fernandez, 30 L.J.C.P. 321), for “it is clear that the justices in eire (or eyre) were a court of equal degree with the Aula Regia. The Aula Regia was where the King was present; and the justices in eire were sent abroad into the different counties with all the powers and authorities of the Aula Regia, superseding all the local tribunals wherever they came. It is not at all necessary to maintain that judges of assize are of equal degree with the justices in eire; but all the books which treat of the subject agree that they possess and exercise many of the rights, privileges, and authorities of those whose functions they have superseded” (per Erle C.J., *Fernandez*, 10 C.B.N.S. 29, 30).

On the other hand, great antiquity and importance do not, per se, constitute a court a Superior Court, for the Lord Mayor’s Court of London is an Inferior Court (see INFERIOR).

The Court of Admiralty was not one of the “Superior Courts of law or equity at Westminster”, within Common Law Procedure Act 1852 (c.76) s.226 (*Milburn v London & South Western Railway*, L.R. 6 Ex. 4).

“Superior Court” (County Courts Admiralty Jurisdiction Act 1868 (c.71) s.9) meant “Superior Court having Admiralty jurisdiction”, which, semble, the Q.B.D. was not but the Cinque Ports Court was (*Rockett v Chippingdale*, 7 T.L.R. 449). See hereon *Hewitt v Cory*, L.R. 5 Q.B. 418.

The county court can be a “Superior Court” within the meaning of s.14(1) of the Contempt of Court Act 1981 (c.49) (*Whitter v Peters*; *Peart v Stewart* [1982] 2 All E.R. 369).

The Crown Court was a “superior court” for the purposes of the Supreme Court Act 1981 (c.54) ss.1(1) and 45 (*R. v Crown Court, Ex p. Essex Chief Constable* [1994] 1 All E.R. 325).

Stat. Def., Contempt of Court Act 1981 (c.49) s.19; Civil Jurisdiction and Judgments Act 1982 (c.27) Sch.6 para.5(2), Sch.7 para.5(2).

Cp. COURT; COURT OF RECORD; HIGH COURT; JUDGE; SUPREME COURT; INFERIOR COURT; JURISDICTION.

SUPERIOR COURT OF RECORD. Designation as a superior court of record does not in itself prevent a court or tribunal from being susceptible to judicial review (*R. (on the application of Cart) v Upper Tribunal* [2009] EWHC 3052 (Admin)).

SUPERSEDE. “A compulsory order ‘supersedes’ a voluntary winding-up (of a company) as from the date of the order; but that does not mean that it entirely puts an end to everything that has been previously done in the voluntary winding-up” (per Cotton L.J., *Thomas v Lionite Co*, 17 Ch. D. 250). See WINDING UP.

SUPERSTITIOUS. Masses for the dead were contrary to the Dissolution of Colleges Act 1547 (c.14), and a gift therefor, by a person domiciled in England, was void as being a superstitious use (*West v Shuttleworth*, 4 L.J. Ch. 115), even though the persons to receive the gift, and by whom the masses were to be performed, were resident where such a legacy was lawful (*Re Elliott*, 39 W.R. 297). But gifts for masses for the dead were held to be charitable in *Re Caus* [1934] Ch. 162.

Cp. CHARITABLE USE. See MONASTIC.

SUPERVISION. “Supervision of a pharmacist” (Pharmacy and Poisons Act 1933 (c.25) s.18; Poisons Act 1972 (c.66) s.3(1)(a)(iii)) does not cover a case of a sale in a shop where the registered pharmacist is in the stockroom upstairs and only appears if and when he is asked for (*Roberts v Littlewood’s Mail Order Stores* [1943] 1 K.B. 269); but as, in a self-service chemist’s shop, the sale was not completed until the

SUPERVISION

cashier has accepted money, and there was a registered pharmacist with the cashier, the transaction took place under his “supervision” (*Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern)* [1953] 1 Q.B. 401).

The extent of the “immediate supervision” (Building (Safety, Health and Welfare) Regulations 1948 (No.1145) reg.6) required in erecting, etc. a scaffold varies in degree according to the nature of the scaffold and the difficulties and dangers involved. Thus, where a scaffold composed of planks on trestles is being moved, and those moving it are competent workmen, occasional inspections by the foreman are enough (*Maloney v Cameron* [1961] 1 W.L.R. 1087).

“Immediate supervision” (Building (Safety, Health and Welfare) Regulations 1948 (No.1145) reg.79(5)) means that the supervision cannot be delegated; the words do not necessarily mean that supervision must be constant and unremitting for the amount of supervision required will vary according to the nature of work (*Owen v Evans & Owen (Builders)* [1962] 1 W.L.R. 933).

And See STOWAGE.

See WINDING-UP.

“Supervision order”: Stat. Def., Criminal Justice Act 1948 (c.58) ss.74(1), 72; Children and Young Persons Act 1969 (c.54) s.11; Criminal Justice Act 1972 (c.71) s.12; Guardianship Act 1973 (c.29) s.3.

“Continual supervision throughout the night” (Social Security Act 1975 (c.14) s.35(1)(b)(ii)). A person constantly present and ready to intervene to assist a sufferer from epilepsy in the event of an attack might for that reason alone be exercising “Continual supervision” within the meaning of this section. It is not necessary that the supervisor shall be constantly awake (*Moran v Secretary of State for Social Services, The Times*, March 14, 1987).

Where it was a term of an insurance holiday that an unqualified person carrying out a structural survey was to be “supervised”, the degree of supervision required was that which was regarded as good practice in the profession. It was not essential for the supervising surveyor to attend the site being inspected (*Summers v Congreve Horner & Co* [1992] 40 E.G 144).

“Supervision, direction or control”: see CONTROL.

SUPERVISION ORDER. Stat. Def., s.63 of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6).

SUPPLEMENTAL. A deed expressed to be “supplemental” to a previous deed will, since the Conveyancing Act 1881 (c.41), have effect as though it had been endorsed on the previous deed or contained a full recital thereof (s.53). Cp. ANNEX; PRIMARY.

SUPPLEMENTARY. “49. Section 41 is, as the heading to that congeries of sections heralds, supplementary. Supplementary means what it says: it is added to the power in s.9 to fill in details or machinery for that which the Act, and in particular s.9(2), does not itself provide. It enables that which the Act empowers to be effective.” (*Public Law Project, R. (on the application of) v Secretary of State for Justice* [2014] EWHC 2365 (Admin).)

SUPPLEMENTARY BENEFIT. Stat. Def., Supplementary Benefits Act 1976 (c.71) s.34; Social Security Act 1980 (c.30) Sch.2 para.29(b).

SUPPLIED. “Goods supplied”, as used in the consideration for a guarantee; held to mean, “goods to be supplied”, so that the guarantee was not for a past consideration (*Hoad v Grace*, 31 L.J. Ex. 98). See also GIVEN.

“Factory where mechanical power is supplied”, as used in definition of “tenement factory”: see *Re Brass and London CC* [1904] 2 K.B. 336, cited *FACTORY*; *Mumby v Volp* [1930] 1 K.B. 460.

Soda water bottles supplied by a manufacturer for sale in a shop and returnable when empty were held to be “supplied” under a contract of sale within the meaning of Sale of Goods Act 1893 (c.71) s.14, and therefore to be subject to the implied warranty of fitness within the meaning of the section; see *Gedding v Marsh* [1920] 1 K.B. 668.

“Persons supplied with water”, within a waterworks company’s Act, includes an owner whose house is tenanted if such owner be liable to pay the water rate (*Brock v Harrison* [1899] 1 Q.B. 958).

See WELL SUPPLIED; SUPPLY.

SUPPLIER. Stat. Def., Finance Act 1966 (c.18) s.15(6); Consumer Credit Act 1974 (c.39) s.189; Resale Prices Act 1976 (c.53) s.24; s.182(4) of the Transport Act 2000 (c.38).

Stat. Def., Groceries Code Adjudicator Act 2013 s.22.

SUPPLIES. The provision of housing accommodation was within the ambit of “supplies and services” in reg.51(1) of the Defence (General) Regulations 1939 (*Blackpool Corp v Locker* [1948] 1 K.B. 349).

SUPPLY. To “supply” anything—e.g. water—means passing it from one who has it to those who want it; you may “provide” a thing for yourself, but that is not “supplying it” (*West Surrey Water Co v Chertsey* [1894] 3 Ch. 513).

But a local authority “supply water within their district” (Public Health Act 1875 (c.55) s.54) when they have taken upon themselves the burden of carrying out the water supply sections of the Act, although the delivery of the water has not actually begun nor are their works completed (*Jones v Conway etc. Water Board* [1893] 2 Ch. 603). Cp. Public Health Act 1936 (c.49) s.119.

“The case of *East London Waterworks Co v St. Matthew, Bethnal Green*, 17 Q.B.D. 475, cited *PARTY*, shows what, in such an Act as this—a waterworks company’s Act—is the meaning of the words ‘works necessary for supplying water’; and that they include works necessary for preventing waste of water” (per Esher M.R., *Chapman v Fylde Waterworks Co* [1894] 2 Q.B. 599, applied in *Batt v Metropolitan Water Board*, 80 L.J.K.B. 521; see also *Metropolitan Water Board v Johnson* [1913] 3 K.B. 900); “the expression ‘supplying water’ includes the power of regulating the supply” (per Esher M.R., *East London Waterworks Co v St. Matthew*, above), by, e.g. stop-valves and guard boxes. See also *Grand Junction Waterworks Co v Rodocanachi* [1904] 2 K.B. 238, cited *WASTE*. See *WATER WORKS*. “Source of water supply”: see *SOURCE*.

Supply of water with sanction of Local Government Board (Public Health Act 1875 (c.55) s.61): see *Soothill v Wakefield* [1905] 2 Ch. 516; *Tynemouth v Newbiggin*, 80 J.P. 195. Cp. Public Health Act 1936 (c.49) s.114. As to the supplying of water under s.126 of the Public Health Act 1936, (above), see *Border Rural DC v Roberts* [1950] 1 K.B. 716.

The “supply of water” outside a company’s statutory limits is not incident to its powers to supply within those limits; and the point of supply is where the water is made available for consumption: see *Att-Gen v West Gloucestershire Water Co* [1909] 2 Ch. 338; cp. *Gaslight & Coke Co v South Metropolitan Gas Co*, 62 L.J. Ch. 123.

"Undertakers who supply water" (Water Act 1945 (c.42) Sch.3 para.46) includes permitting a householder to connect his house to the main (*South Devon Water Board v Gibson* [1955] 2 Q.B. 448).

The point of "supply" of gas (Metropolis Gas Act 1860 (c.125) s.6) is the meter from which the gas passes into the customer's pipes (*Gaslight & Coke Co v South Metropolitan Gas Co*, 58 L.T. 899; *Imperial Gaslight Co v West London Gas Co*, 56 L.J. Ch. 862, fn. See those cases, and also *Gaslight & Coke Co v South Metropolitan Gas Co*, 62 L.J. Ch. 123, as to "supply gas for sale" in same section).

The "supply of electricity" which, under the first part of Electric Lighting Act 1882 (c.56) s.11, a local authority might contract for without the consent of the Board of Trade, "only means that the local authority, who are the undertakers, may buy the current in bulk, or in some other way", and not that such authority can (without the consent) "transfer" its power of distributing such electricity to the consumers (per Warrington J., *Sudbury v Empire Electric Light Co* [1905] 2 Ch. 110). See also TRANSFER.

As to the meaning of "supply" in Electric Lighting Acts 1882–1919, see *Att-Gen v County of London Electric Supply Co Ltd* [1926] 1 Ch. 542; see also *Att-Gen v Corp of Leicester* [1910] 2 Ch. 359; *Att-Gen v Southport Corp* [1923] 1 Ch. 548; affirmed [1924] A.C. 909.

As to the right to demand "supply" of electric energy, under Electric Lighting Act 1882 (c.56) s.19, see *Husey v London Electric Supply Corp* [1902] 1 Ch. 411, cited ENERGY; as to a "corresponding supply", see *Metropolitan Electric Supply Co v Ginder* [1901] 2 Ch. 799, cited UNDUE PREFERENCE.

A power to a municipal authority to supply electric energy to customers does not authorise it to sell or hire out apparatus for the use of the energy; the "supply" is completed at the customer's terminals; the installation of electricity and the provision of fittings is a separate business incidental to the use but not to the supply of energy: see *Att-Gen v Leicester Corp*, above. See also *London CC v Att-Gen* [1902] A.C. 165, cited TRAMWAY; *Att-Gen v Manchester* [1906] 1 Ch. 643, cited CONVEY; *Morris v Loughborough* [1908] 1 K.B. 205.

For the purposes of the Electricity (Supply) Acts 1882–1928, means supply at the consumer's terminals (*Att-Gen v Gravesend Corp* [1936] Ch. 550).

A person was not guilty of supplying intoxicating liquor in contravention of an Order of the Central Board (Liquor Traffic) if the liquor was seized by a constable before it reached the hand of the person for whom it was intended; see *Bailey v Saunders*, 86 L.J.K.B. 1066. If liquor is sold and appropriated to a purchaser during lawful hours, but handed over during unlawful hours an offence is committed: see *Hall-Dalwood v Emerson*, 87 L.J.K.B. 296. If liquor is sold to a purchaser in licensed premises and taken to a private room and there consumed the offence is committed: see *Ellis v Adames*, 90 L.J.K.B. 119.

"Supply", in Trading With the Enemy Proclamation 1914: see *Salti et Fils v Procurator-General* [1919] A.C. 968.

"Supply" of goods for export (Knitted Goods (Manufacture and Supply) Order 1948 (No.316) art.3(2)): see *Patel v Willis* [1951] 2 K.B. 78.

"Supplying" a ship with fuel oil is not "equipping" it within s.22(1)(a)(x) of the Judicature Act 1925 (c.49) (*Secony Bunker Oil Co v Owners of SS D'Vora* [1953] 1 W.L.R. 34).

A person "supplies" goods for the purposes of the Trade Descriptions Act 1968 (c.29) s.1(1) upon delivery by the seller or, if they are to be collected by the buyer, upon notification that they are ready for delivery, and not, if that is different, at the time of the agreement to buy (*Rees v Munday* [1974] 1 W.L.R. 1284). "Supplied" (s.1(1)(b)) comprehends more than an act of delivery, and the actual moment when goods are handed over is not the only relevant time to be considered when deciding whether they have been "supplied" with a false description (*R. v Hammertons Cars* [1976] 1 W.L.R. 1243). Supply in effect means distribution, and it is not necessary to establish a sale of goods for a "supply" to be made under s.1(1). Thus the offering of pre-recorded video cassettes for hire to members of the public was held to be an offer to supply goods (*Cahalne v Croydon LBC* (1985) 4 Trl. 199).

"Are supplied" (Finance Act 1972 (c.41) s.7(8); see now Value Added Tax Act 1983 (c.55) s.5). These words are to be construed as referring to a continuing and subsisting state of affairs, and not, as in the case of rented television sets, to the single act of delivery at the beginning of the period of hire (*Customs and Excise Commissioners v Thorn Electrical Industries* [1975] 1 W.L.R. 1661).

The word "supply" in ss.4(1)(b) and 4(3)(a) of the Misuse of Drugs Act 1971 (c.38) implies an act designed to benefit the recipient of the drug and not the supplier. There was, therefore, no "supply" of a drug where one person gave it to another for safekeeping (*R. v Dempsey* (1985) 82 Cr.App.R. 291). But a person in unlawful possession of a controlled drug which has been deposited with him for safekeeping has the "intent to supply it to another" within the meaning of s.5(3) if his intention is to return the drug to the person who deposited it with him (*R. v Maginnis* [1987] 2 W.L.R. 765). Where an addict purchased a small quantity of heroin for immediate consumption by himself and a friend, it was held that there had been an act of supply, although on a very small scale (*R. v Spinks* [1987] Crim. L.R. 786). To support a conviction of the offence of conspiring to offer to supply a controlled drug it is necessary to prove that the conspirators intended that the drug be supplied (*R. v Gill*, *The Times*, January 13, 1993).

"Supply of goods or services" (Value Added Tax Act 1983 (c.55) ss.1, 2 EC Council Sixth Directive 77/388). A company carrying on a charge card or credit card operation made a "supply" to the retailer of a financial service for a consideration for the purposes of value added tax. Although the agreement between the card operators and the retailer provided only for the purchase of debts at a discount it was held that there was a provision of facilities to the retailer in exchange for the discount which amounted to a "supply" within the meaning of this section (*Customs and Excise Commissioners v Diners Club* [1989] 2 All E.R. 385). The provision of in-flight catering to passengers on domestic flights was an integral part of the transport, and not a separate "supply" for the purposes of this section (*Customs and Excise Commissioners v British Airways* [1990] S.T.C. 643). A merchant bank was, for VAT purposes, "supplying" the financial services it rendered to an Isle of Man company in issuing, placing and underwriting the issue of its shares (*Singer & Friedlander v Customs and Excise Commissioners* [1989] 1 C.M.L.R. 814). Where vouchers are sold to a retailer with an agreement that they will be redeemed at a discount, the discount is a consideration for the supply of services which are taxable under these sections (*High Street Vouchers v Customs and Excise Commissioners* [1990] S.T.C. 575). Trophies presented at the annual Professional Footballers' awards dinner were supplied for a consideration included in the price of the dinner and therefore were not a VAT taxable

supply (*Customs and Excise Commissioners v Professional Footballers' Association (Enterprises)*, *The Times*, February 2, 1993). Equipment delivered and installed, but without final payment having been made, was "supplied" for value added tax purposes under s.5(1) (*Tas-Stage v Customs and Excise Commissioners* [1988] S.T.C. 436). The operation of a hostel providing nightly accommodation for homeless persons was exempt by virtue of art.13A(1)(g) of the Sixth Directive being the "supply of services linked to welfare and social security work by a body governed by public law" (*Lord Mayor of London and Citizens of the City of Westminster v Customs and Excise Commissioners* [1989] V.A.T.T.R. 71). On a road building contract the contractor supplied all raw materials but engaged a sub-contractor to provide the labour. The fees paid to the sub-contractor were calculated by charging for work done including materials but deducting the cost of materials borne by the contractor. It was held that this arrangement did not constitute a "supply" of materials by the sub-contractor to the contractor (*Hopkins J (Contractors) v Customs and Excise Commissioners* [1989] V.A.T.T.R. 107). Unlawful trading by a bankrupt can be a "supply" for the purposes of value added tax (*J. E. Scally v Customs and Excise Commissioners* [1989] V.A.T.T.R. 245). Accommodation provided by a company to a representative solely for the purposes of the business was not a taxable "supply" by the business (*Stormseal (UPVC) Windows Co v Customs and Excise Commissioners* [1989] V.A.T.T.R. 303). Where credit notes were issued in relation to services which had not been or would not be supplied there was no taxable "supply" (*Securicor Granley Systems v Customs and Excise Commissioners* [1990] V.A.T.T.R. 9). A driving school whose instructors were self-employed and who paid to the school a proportion of the fees charged was, nevertheless, held to be supplying a service within the meaning of this section, on the grounds that the instructors were not in business on their own and were providing the driving tuition on behalf of the driving school (*Cronin (t/a Cronin Driving School) v Customs and Excise Commissioners* [1991] S.T.C. 333). Classes given by individual members of a string quartet may contribute part of a "supply" by the quartet collectively, but where they are provided by a university for its students the quartet acts as its agent and the supplies are exempt under Sch.6, Group 6. (*Alberni String Quartet v Customs and Excise Commissioners* (1990) 3 V.A.T.T.R. 166). When a hotel agreed to guarantee the availability of a room for a customer, and the customer had not occupied or cancelled the room before the end of the reservation period a taxable "supply" had been made for the purposes of s.2 of the 1983 Act. The supply took place when the company made the room available and any charge made for it was subject to VAT (*Customs and Excise Commissioners v Bass* [1993] S.T.C. 42). The provision of free meals by a motorway service station to the drivers of coaches who brought their coaches to the service station was a "supply" within the meaning of the Act (*Granada Group v Customs and Excise Commissioners* (1991) 2 V.A.T.T.R. 104). The provision of a wide range of diplomatic services was not a single composite "supply" of services (*Bophuthatswana National Commercial Corp v Customs and Excise Commissioners* [1992] S.T.C. 741). The settlement of another's liability under a hirepurchase agreement in return for the transfer of the assets concerned gives rise to a taxable "supply" either by way of reimbursement or in consideration of the payment (*Phillip Drakard Trading v Customs and Excise Commissioners* [1992] S.T.C. 568). An agreement to purchase goods subject to conditions, including onward sale, and leaving the vendor with the right and obligation to keep them in the interim, did not constitute a "supply" of the goods (*Creditgrade v Customs and Excise Commissioners* (1991) 1

V.A.T.T.R. 87). Where supplies are made by self-employed individuals it is permissible to infer that they made the supplies directly to customers and not as agents for the person with whom they have a contract for services (*Customs and Excise Commissioners v MacHenry's (Hairdressers)* [1993] S.T.C. 170).

"Supply to him" (Road Traffic Act 1972 (c.20) s.10(6)). Part of a blood sample is "supplied" within the meaning of this section even if it is incorrectly labelled, so long as there is nothing to deter or prevent the defendant from having it analysed (*Butler v DPP* [1990] R.T.R. 377).

Where an employee uses a car owned by him for the purposes of the employer's business and receives an allowance from the employer, there is no supply to the employer for the purposes of art.17(2)(a) of Council Directive 77/388/EEC (VAT). (*Commission v Netherlands* [2004] 1 W.L.R. 35, ECJ).

"The word 'supply' has a wide meaning, being 'supply in any manner'." (*Interfact Ltd v Liverpool City Council* [2005] EWHC 995 (Admin) at [21].)

An aspect of a general supply is not a separate supply for VAT purposes unless it is ancillary (*College of Estate Management v Customs and Excise Commissioners* [2005] UKHL 62).

Stat Def., Consumer Protection Act 1987 (c.43) s.46.

"Goods . . . supplied to a ship for her operation": see GOODS.

Stat. Def., Restrictive Trade Practices Act 1956 (c.68) s.36(1); Fair Trading Act 1973 (c.41) s.137(2); Health and Safety at Work Act 1974 (c.37) s.53; Restrictive Trade Practices Act 1976 (c.34) s.43; Resale Prices Act 1976 (c.53) s.8; Finance Act 1977 (c.36) Sch.6 para.6; Consumer Safety Act 1978 (c.38) s.9; Value Added Tax Act 1983 (c.55) s.3; Video Recordings Act 1984 (c.39) s.1.

Stat. Def., "includes lending" (s.31B of the Copyright, Designs and Patents Act 1988 (cA8), inserted by s.2 of the Copyright (Visually Impaired Persons) Act 2002 (c.33)).

Stat. Def., "in relation to the supply of goods, includes supply by way of sale, lease, hire or hire-purchase, and, in relation to buildings or other structures, includes the construction of them by a person for another person" (s.129 of the Enterprise Act 2002 (c. 40)).

Stat. Def., in context of supplying fireworks, including sale, exchange for consideration and gift, Fireworks Act 2003 (c.22) s.1(3).

"Supplied to the premises", see PREMISES.

"Supplied . . . in the course of a business carried on by him": see BUSINESS.

See AREA; CONTRACT TO SUPPLY; GENERAL SUPPLY.

SUPPLY AGREEMENT. Stat. Def., Groceries Code Adjudicator Act 2013 s.22.

SUPPORT. A bequest "to support" an institution does not offend the law of mortmain (*Re Hedgman, Morley v Croxon*, 8 Ch. D. 156; Tudor Char. (5th edn), 467; 468). See FOUND; MAINTENANCE.

"Support" (Scientific Societies Act 1843 (c.36) s.1) of a society such as the Royal College of Music includes all benefactions which enrich it or further its objects or powers, or relieve it of a burden, or enable it to perform its purposes in a more dignified manner; thus, gifts in kind, and scholarships or prizes not ear-marked to pay the holder's college fees constitute support within the meaning of the Act (*Cane v Royal College of Music* [1961] 2 Q.B. 89).

"Support", in Public Health Act 1875 (Support of Sewers) Amendment Act 1883 (c.37) s.2, "includes vertical and lateral support".

SUPPORTED

As to right of support from neighbouring soil and houses: see Gale (11th edn), Pt 3, Ch.6; *Popplewell v Hodkinson*, L.R. 4 Ex. 248; *Jordeson v Sutton Gas Co* [1899] 2 Ch. 217; *New Moss Colliery Co v Manchester, Sheffield & Lincolnshire Railway* [1897] 1 Ch. 725; *Hamilton v Graham*, L.R. 2 Sc. & D. App. 166.

The right, or duty, under the Housing Act 1936 (c.51) s.26, to demolish a building affected by a clearance order could not be exercised so as to prejudice a right of support enjoyed by an adjacent building (*Bond v Nottingham Corp* [1940] Ch. 429).

A plea of enjoyment of a right of support claim, on the ground that the supported buildings were not visible from the supporting buildings or any public place in the vicinity, was held untenable in *Lloyds Bank Ltd v Dalton* [1942] Ch. 466.

Semble, a contractual provision authorising owners of minerals to withdraw support from the surface does not create an easement, but merely gives immunity from the liability to pay damages for or to be enjoined against such withdrawal (*Elliott v Burn* [1935] A.C. 93). But it does create a “right, privilege or benefit in, over or derived from land” within the Finance Act 1934 (c.32) s.21 (*Inland Revenue Commissioners v New Sharlston Collieries Co Ltd* [1937] 1 K.B. 583; *Earl Fitzwilliam’s Collieries Co v Phillips* [1942] 2 K.B. 42).

“Maintain, uphold, support and keep in repair”: see *London v Great Western Railway* [1910] 2 Ch. 314, cited MAINTAIN.

Stat. Def., “means advice, information or assistance” (s.4 of the Homelessness Act 2002 (c.7)).

Stat. Def., Regulation and Inspection of Social Care (Wales) Act 2016 s.3.

“Loss of support”: see LOSS.

“Maintenance and support” of wife: see MAINTENANCE.

SUPPORTED LIVING. “‘Supported living’ is an alternative to placing vulnerable people in residential care homes. Instead the service supplier provides rented accommodation and the support services needed to enable them to live as independent lives as possible without the need for institutional care. The concept was introduced during the 1990s and developed pursuant to government policy during the early to mid-2000s.” (*Morris-Garner v One Step (Support) Ltd* [2016] EWCA Civ 180.)

SUPPOSED. “‘The supposed cause of action’ (in a pleading), means the ALLEGED cause” (per Alderson B., *Eavestaff v Russell*, 10 M. & W. 366, 12 L.J. Ex. 176; see also *Scadding v Eyles*, 9 Q.B. 860, 862).

“Supposed to be”, when prefacing a quantity: see *Davis v Shepherd*, 1 Ch. 410.

“Supposed” and “suspected” are similar in that they both fall short of knowledge (*Thompson v Gibbens* [1948] T.S.R. 107).

See ENTITLED TO VOTE.

SUPPOSITION. See FAIR AND REASONABLE.

SUPPRESS. To “suppress” anything is to put a stop to it when actually existing, and does not extend to preventing it by suppressing what may lead to it (*Chelsea v King*, 17 C.B.N.S. 625).

“Fraud, or suppression, or concealment” of a material fact, on which to revoke an order of release under Bankruptcy Act 1883 (c.52) s.82(3) (see Bankruptcy Act 1914 (c.59) s.93(3)), must be such suppression or concealment as has in it some element of fraud (per Wright J., *Re Harris* [1899] 2 Q.B. 97).

Suppression of material facts in a divorce suit: see MATERIAL FACT.

See SILENCE.

SUPRA PROTEST. Acceptance, or payment, of bill “for honour above protest” see HONOUR; Chalmers (12th edn), 213 et seq.; Byles (20th edn), 206.

SUPREME COURT. Stat. Def., Interpretation Act 1978 (c.30) Sch.1; Supreme Court Act 1981 (c.54) s.1(1).

Stat. Def., Constitutional Reform Act 2005 (c.4) s.23.

Cp. COURT; HIGH COURT; JUDGE; SUPERIOR COURT.

SURCHARGE. To “surcharge” a common is “putting more cattle therein than the pasture and herbage will sustain, or the party hath a right to do” (3 Bl. Com. 237). See STINT.

“Surcharge and falsify” a settled account: see Dan. Ch. Pr. (8th edn), 420. See also *R. v Carson Roberts* [1908] 1 K.B. 407.

The power of a district auditor of a county council to surcharge the amount of a loss of deficiency upon any person guilty of negligence or misconduct under s.228(1)(d) of the Local Government Act 1933 (c.51), does not cover the power to surcharge a person who is not a member of the council (*Re Dickson* [1948] 2 K.B. 95).

SURETY. Misconduct of a servant condoned by the master discharges one who is surety for the servant: see *Phillips v Foxhall*, L.R. 7 Q.B. 666; *Federal Supply, etc. Co v Angehrn*, 80 L.J.P.C. 8, cited CONDONATION.

“Two sufficient sureties” (Customs Consolidation Act 1876 (c.36) s.247): see *Re Attfield*, 93 L.J.K.B. 1064.

“Surety or guarantor” (Bankruptcy Act 1914 (c.59) s.44), includes a person who gives security without incurring personal liability (*Re Conley*, 107 L.J. Ch. 257).

Stat. Def., Consumer Credit Act 1974 (c.39) s.189.

See GUARANTEE.

SURETY OF THE PEACE. Is an acknowledgment of a bond to the Crown, taken by a competent judge or magistrate, as a surety that the peace shall be kept by a particular person or persons: see hereon Jacob, 4 Bl. Com., Ch. 18; STONE, *Surety of the Peace*. See also *Wise v Dunning* [1902] 1 K.B. 167. For an early example, see Acts, xvii, 9.

See ENTER; GOOD BEHAVIOUR; PEACE; RECOGNISANCE.

SURF. “A ‘surf’ day in a charterparty is a day on which the surf on the beach is so heavy that lighters cannot land their cargo there” (per Walton J., *Bennett v Brown* [1908] 1 K.B. 490, cited WEATHER WORKING DAY, which see hereon). See also *British & Mexican Shipping Co v Lockett* [1911] 1 K.B. 264, cited WORKING DAYS; *Holman v Peruvian Nitrate Co*, 5 Rettie 657.

SURFACE. “‘Surface’, superficies, prima facie means, of course, nothing more than the mere *vestimenta terræ*” (MacS. 19); “the top of the earth and whatsoever is upon the face thereof” (Cowel, *Superficies*). See hereon *Wakefield v Buccleuch*, L.R. 4 Eq. 613, cited SOIL; but see *London & North Western Railway v Evans* [1893] 1 Ch. 16, cited SATISFACTION; SUPPORT. Cp. VEST.

For the canons of construction of Inclosure Acts, where surface and minerals are severed, see *Bell v Dudley* [1895] 1 Ch. 182. See also *Consett Waterworks Co v Ritson*, 22 Q.B.D. 318, 702; but see *New Sharlston Collieries v Westmoreland* [1904] 2 Ch. 447, fn.; *Bishop Auckland Co-operative Society v Butterknowle Colliery Co*, in House of Lords nom. *Butterknowle Colliery Co v Bishop Auckland Co-operative Society* [1904] 2 Ch. 419, [1906] A.C. 305; *Welldon v Butterley Co* [1920] 1 Ch. 130.

In that case, Farwell J., said, “I have great doubt whether *Consett Waterworks Co v Ritson*, or *Bell v Dudley*, above, can stand with the subsequent decision of the House

of Lords in *New Sharlston Collieries v Westmoreland*", and Lord Macnaghten said, "In my opinion, *Consett Waterworks Co v Ritson* can no longer be regarded as an authority". *Butterknowle Colliery Co v Bishop Auckland Co-operative Society* was distinguished in *Butterley Co v New Hucknall Calliery Co* [1910] A.C. 381.

In *Consett Industrial & Provident Society Ltd v Consett Iron Co Ltd* [1922] 2 Ch. 135, *Consett, etc. v Ritson* was followed on the ground that although the reasoning upon which that decision was founded had been disapproved by the House of Lords in *Butterknowle, etc. v Bishop Auckland, etc.*, above, the decision itself had not been overruled and was therefore binding upon the court. But see *Welldon v Butterley Co*, above.

The fundamental principle, applicable not only to Inclosure Acts but to all cases in which there is a severance of the surface from the subjacent minerals, is that enunciated by Lord Blackburn in *Davis v Treharne* (50 L.J.Q.B. 667; 6 App. Cas. 466) and cited by Selborne C., in *Love v Bell* (53 L.J.Q.B. 258; 9 App. Cas. 288): "I think it must be taken as perfectly settled ground that, as of common right, the surface land has a right to be supported by subjacent strata of minerals. Although that is common right, it may be shown—the burden lying upon those who wish to show it—that the person who has got the surface obtained it either upon terms which would give him no right to support (he having accepted it and taken it upon those terms), or that, before he got it, the person from whom he claims (the owner of the surface) had parted with the right of support from below, in which case, of course, the owner of the surface could be in no better position than the person who sold it to him. In common right, the person who owns the surface has a right to have it properly supported below by minerals, and if there are mineral workings under the surface, to have a proper support left for it by pillars", and "whoever claims against that has the burden of proof thrown upon him" (per Selborne C., *Love v Bell*); see also *Dixon v White*, 8 App. Cas. 833; 20 Sc. L.R. 541; see also *Davies v Powell Duffryn Steam Coal Co Ltd*, 91 L.J. Ch. 40.

That proof will not be supplied "by showing that there are words, however, large, applicable to the right of working, and privileges connected with it, and compensation to be paid for working and for the use of those privileges" (per Selborne C., *Love v Bell*, 53 L.J.Q.B. 258; 9 App. Cas. 289). Though much, and sometimes decisive, reliance has been placed on a compensation clause as giving the mineral-owner a right (on paying the compensation) to let down the surface (*Consett Water-works Co v Ritson*, above; see also per Farwell J., and Romer L.J., *Bishop Auckland Co-operative Society v Butterknowle Colliery Co*, above; *Anderson v M'Cracken*, 37 Sc. L.R. 587, cited PROFITABLE), yet, generally, such a provision seldom justifies a mineral-owner in letting down the surface, and the true view is, probably, that stated by Lord Davey in *New Sharlston Collieries v Westmoreland*, above: "It does not seem to me to give a license to do the injury, if you say that a person shall pay compensation if he does it. A covenant (and, it is submitted, *a fortiori*, a command) to pay compensation for doing a thing which you are prohibited from doing, is in no way contrary to, or inconsistent with, the continuance of the obligation not to do it". But side by side with that should be considered the following statement by Loreburn C., in *Butterknowle Colliery Co v Bishop Auckland Co-operative Society*: "Where power is given to get the minerals on paying compensation for damage done to the surface, the court will still scrutinise the compensation clause. Are there any rights belonging to the mine-owner on the surface (such as a right of making roads) to which the compensation clause may refer? If the compensation clause is capable of being satisfied by reference to acts done on the

surface, then, though it may be wide enough to cover also damage done to the surface by taking away the support, still it must be confined to damage done on the surface, and the inference that support may be taken away on payment of compensation will not be drawn. Again, courts have asked whether the compensation is manifestly inadequate for such an injury as letting down the surface, and have commented upon the absence of any provisions for compensation. Either of these circumstances has supplied judges with a reason for so cutting down wide language, in a grant of minerals, as to imply a condition that the surface shall be supported”.

As to the right of the owner of a lower stratum of coal to work it even though such working cause subsidence to a superjacent stratum, on paying compensation to the owner of the latter, see *Butterley Co v New Hucknall Colliery Co*, above; *Welldon v Butterley Co* [1920] 1 Ch. 130.

As to the construction of clauses for compensation where subjacent minerals are taken under compulsory powers, see *Birch v Joy*, 3 H.L. Ca. 565, and other cases, cited POSSESSION, para.(11). Where surface is sold under Special Act, which Act is replaced by a subsequent Act: see *London & North Western Railway v Walker* [1903] A.C. 289, overruling *R. v London & North Western Railway* [1899] 1 Q.B. 921.

Surface, as distinguished from the subjacent soil, e.g. the surface over a railway tunnel, is land of which exclusive possession may be had, and a title to which may be acquired by prescription, under the Real Property Limitation Acts, subject to the rights of the owners of the subjacent soil (*Midland Railway v Wright* [1901] 1 Ch. 738).

Prima facie, surface includes the subjacent minerals (*Seddon v Smith*, 36 L.T. 168).

The right of support of surface by the subjacent minerals is an “easement, right, or privilege”, within Settled Land Act 1925 (c.18) s.41, and if required in a lease of the minerals that would be for “mining purposes” within the definition in s.117(1)(xv); and the tenant for life of the settled surface (being also owner in fee of the subjacent minerals of which he is granting a lease) may, under s.6, grant the lease with the right to work the mines so as to let down the surface (*Re Sitwell* [1905] 1 Ch. 460).

“Surfaces”, in a patent specification: see *Barber v Grace*, 1 Ex. 338.

Stat. Def., Coast Protection Act 1949 (12, 13 & 14 Geo. 6, c.74) s.49(1); Mines (Working Facilities and Support) Act 1966 (c.4) s.14.

See also AS FULLY; BREAK; FULL COMPENSATION; GRANT; PROFITABLE; SUBSIDENCE; SURFACE DAMAGE; USUAL AND MOST APPROVED WAY; SUPPORT.

SURFACE DAMAGE. “The expression ‘surface damage’ is a term well known in the North of England in the colliery districts. It is damage to the crops by using the surface, or by the smoke coming from the colliery works or pit-heaps, in respect of which compensation is payable under leases or reservations of coal, or where lords work coal by custom under copyhold lands. It is difficult to say that the injury to the foundations of a house extending to the walls and roof of the house, or the subsidence of the soil partially or wholly destroying the future fertility of the soil, is a surface damage; it may be damage to the house and land, but not surface damage” (*Allaway v Wagstaff*, 29 L.J. Ex. 58; see also *Neill’s Trustees v Dixon*, 7 Sess. Ca. (4th Series) 741).

Where, however, power is reserved, or given, to let down the SURFACE upon payment of “surface damage”, then “it is quite clear on the authorities that it depends on the construction of each particular contract whether the expression ‘surface damages’ includes damages arising from subsidence of the ground occasioned by underground mineral workings, or is limited to damages arising from operations on the

SURFACE

surface” (per Lord Adam, *Hallpenny v Dewar*, 35 Sc. L. R. 696); in that case (following *Stewart’s Hospital v Waddell*, 27 Sc. L.R. 815) it was held that “surface damage” included damage from subsidence.

See DAMAGE.

SURFACE RUNOFF. Stat. Def., Flood and Water Management Act 2010 s.6.

SURGEON. “In strictness, to act as a surgeon something must be done by the hand” (per Knight-Bruce L.J., *Ex p. Crabb, Re Palmer*, 25 L.J. Bank. 49).

“A surgeon, formerly, was a mere operator, who joined his practice to that of a barber. In latter times all that has been changed, and the profession has risen into great and deserved eminence. But the business of a surgeon is, properly speaking, with external ailments and injuries of the limbs” (per Best C.J., *Allison v Haydon*, 4 Bing. 621). But “with a view to the recovery of a patient in a case of that description, he may perhaps prescribe and dispense medicine” (*Allison*; see also per Cresswell J., *Apothecaries Co v Lotinga*, 2 Moo. & R. 499). See APOTHECARY.

Surgeons were formerly a sad lot: see 34 & 35 Hen. 8, c.8. But see INFERIOR TRADESMAN.

The company of Surgeons and Barbers was constituted and regulated by an Act concerning Barbers and Surgeons of 1540 (c.42), which union was dissolved by an Act of 1745 (c.15), which statute incorporated, and contained regulations as to, the surgeons of London. The Royal College of Surgeons of England was incorporated by Charter, September 14, 1843, the subsequent Charters being March 18, 1852, September 8, 1859 and July 20, 1888.

“Manipulative surgeon”: the use of the title “manipulative surgeon” was an infringement of the Medical Act 1858 (c.90) (*Jutson v Barrow* [1936] 1 K.B. 236).

As to falsely pretending to be a surgeon, see PHYSICIAN.

“Practising as a surgeon”: see PRACTISE; CARRY ON.

“Dental surgeon”: see DENTAL; DENTIST.

See “medical practitioner”, under MEDICAL.

See also APOTHECARY.

SURGERY. See PHYSIC.

SURGICAL. “Any surgical operation” (Mental Health Act 1983 (c.20) s.57(1)(a)). Treatment by administering the drug gosevelin by injection using a conventional hypodermic syringe could not be described as a “surgical operation” (*R. v Mental Health Commission, Ex p. W.*, *The Times*, May 27, 1988).

“Medical, surgical, . . . requirements”: see MEDICAL.

SURMISE. “In my view, all that the Judge meant when she used the word ‘surmise’ was that, in the light of all the other findings she had made, on which she preferred the evidence on behalf of the claimant, it would follow that there must have been a laser machine at the defendant’s clinic at the time of the incident.” (*Kashi (t/a Tantalizing Face and Body Clinic) v Mustafa* [2011] EWHC 2701 (QB).)

SURNAME. It seems that a bequest to a class of the “surname” of a particular person is more readily construed as indicating the “family” or “stock” of that person than if the word “name” were used (3 Jarm. (8th edn), 1602, 1645, citing *Carpenter v Bott*, 16 L.J. Ch. 433).

See name and arms clause, under NAME. See also *Re Drax*, 75 L.J. Ch. 317, cited WRITING.

A candidate's surname, e.g. in a nomination for town councillor, may be sufficiently stated though inaccurately spelt, e.g. Millar for Miller (*Miller v Everton*, 64 L.J.Q.B. 692).

Stat. Def., Registration of Business Names Act 1916 (c.58) s.22; Companies Act 1981 (c.62) s.34. Companies Act 1985 (c.6) ss.289, 305, Sch.1 para.4; Business Names Act 1985 (c.7) s.8.

Stat. Def., "in relation to a peer or person usually known by a British title different from his surname, means the title by which he is known" (Companies Act 2006 s.1208).

See also CHRISTIAN NAME.

SURPLICE FEES. "Those fees and dues which go by the name of 'surplice fees', being fees on interments, burials, marriages, and the like. With respect to surplice fees it is said that none are due to the minister as of common right, but depend on social custom only" (2 Steph. Bl. 743; cited and adopted by Kay J., *Stewart v West Derby Burial Board*, 34 Ch. D. 339).

SURPLUS. "It is to the particular language and to the circumstances of each will that we must look in order to see whether the word 'surplus' or 'residue' is to be taken as indicating surplus or residue properly so called, or merely as indicating" a share of a particular fund (per Cranworth C., *Southmolton v Att-Gen*, 5 H.L. Cas. 26).

"Surplus" will not always be construed as "overplus", in the wide sense of whatever shall turn out to be the overplus (*Page v Leapingwel*, 18 Ves. 466). Cp. OVERPLUS; REMAINDER.

"Surplus" widens the meaning of "rents, issues, and profits", in a residuary devise, e.g. of "residuary or surplus rents, issues, and profits" (*Cust v Middleton*, 34 L.J. Ch. 185; see also per Hardwicke C., *Sherrard v Harborough*, Amb. 164).

"Surplus assets": in the winding-up of a company, has no fixed legal meaning. The phrase may mean the assets remaining (1) after payment of the company's liabilities and the costs of winding-up, or (2) after those payments and recoupment of capital (*Re New Transvaal Co* [1896] 2 Ch. 751, where the latter meaning was adopted, and the same was followed in *Re Peabody Co*, 104 L.T. 128; see *Re Ramel Syndicate* [1911] 1 Ch. 749). See also *Re Anglo-Continental Corp* [1898] 1 Ch. 327, cited WINDING-UP; *Re Crichton's Oil Co* [1902] 2 Ch. 86; *Re Wharfedale Brewery Co* [1952] Ch. 913. See DISTRIBUTED.

"Surplus assets", in the memorandum of association of a company, was held to mean what was left after the payment of debts and the repayment of the whole of the preference and ordinary capital (*Re Dunstable Portland Cement Co*, 48 T.L.R. 223).

"Surplus assets": in the memorandum and articles of a company, "surplus assets" means all the assets of the company remaining after creditors have been paid and the costs of winding up have been paid or provided for, but before any payment to members as such has been made or provided for. "Any further surplus assets" means that part of the "surplus assets" remaining after paying or providing for the members (*Dimbula Valley (Ceylon) Tea Co v Laurie* [1961] 1 Ch. 353).

For a comparison of "balance" and "surplus", see *Re Herbert* [1946] 1 All E.R. 421.

Stat. Def., "an amount by which the assets of the existing levy body or board exceeds its liabilities and expenses" (Natural Environment and Rural Communities Act 2006 s.93(5)).

"Surplus money": held, contextually, to pass South Sea Stock and 3.25 per cents (*Newman v Newman*, 26 Bea. 218). See also MONEY.

“Surplus capital”: see Savings Bank Act 1929 (c.27) s.8.

“Surplus land”: see SUPERFLUOUS LAND.

SURPLUSAGE. “‘Surplusage’ comes of the French ‘surplus’, that is, an overplus, and signifies in the law an addition of more than needs which sometimes is the cause that a writ shall abate, but in pleading many times it is absolutely voyd, and the residue of the plea shall stand good” (Termes de lay Ley).

SURRENDER. “‘Surrender’, *sursum redditio*, properly is a yeelding up an estate for life or years to him that hath an immediate estate in reversion or remainder, wherein the estate for life or years may drowne by mutuall agreement betweene them” (Co. Litt. 337B; see thereon Butler’s note, 294, where it is said “a surrender differs from a release in this respect, that the release operates by the greater estate’s descending upon the less—a surrender is the falling of a less estate into a greater”). See hereon Co. Litt. 338A, et seq.; Touch. Ch. 17; *Burton v Barclay*, 9 L.J.O.S.C.P. 238; cp. RELEASE; RENUNCIATION; RESIGNATION.

Surrender “by act or operation of law” (Statute of Frauds (29 Car. 2, c.3) s.3) is “where the owner of a particular estate has been a party to some act, the validity of which he is by law afterwards estopped from disputing, and which would not be valid if his particular estate had continued to exist” (per Parke B., delivering the judgment, *Lyon v Reed*, 13 L.J. Ex. 381); or, in other words, such a surrender (as distinguished from a surrender by deed (Real Property Act 1845 (c.106) s.3)) is where the parties accomplish a state of things (other than a mere agreement to surrender, or a cancellation) which is inconsistent with the continuance of the particular estate. Examples of such a surrender are as follows.

A valid, not voidable, and perfected re-demise between the same landlord and tenant (*Nicholls v Atherstone*, 10 Q.B. 944; *Easton v Penny*, 67 L.T. 290; see hereon *Knight v Williams* [1901] 1 Ch. 749; *Canterbury v Cooper*, 100 L.T. 597), “even for a shorter term than the old term, if the new term coincides with any part of the old” (per Willes J., *Phené v Popplewell*, 12 C.B.N.S. 334), and which redemise may be by parol (*Nicholls v Atherstone*, above; *Fenner v Blake* [1900] 1 Q.B. 426) if for a term grantable by parol (*Forquet v Moore*, 7 Ex. 870), though the old demise was by deed (*Whitley v Gough*, Dyer, 140, pl. 43). A mere agreement for a re-demise will not suffice (*Forquet v Moore*, above).

“An agreement between a landlord and tenant that the tenancy shall be put an end to, if such agreement is acted on by a change of possession. In my opinion, it is quite immaterial whether the landlord himself takes possession or a third person” (per Keating J., *Phené v Popplewell*, above; see hereon *Thomas v Cook*, 2 B. & Ald. 119; *Dodd v Acklom*, 13 L.J.C.P. 11; *Grimman v Legge*, 8 B. & C. 324; *Doe d. Hudleston v Johnstone*, M’Cle. & Y. 141; *Johnstone v Hudleston*, 4 B. & C. 922; *Bessel v Landsberg*, 7 Q.B. 638; *Griffith v Hodges*, 1 C. & P. 419; *Redpath v Roberts*, 3 Esp. 225). A mere agreement to surrender (per Brett L.J., *Oastler v Henderson*, 2 Q.B.D. 577; *Re Panther Lead Co* [1896] 1 Ch. 978), or the mere acceptance of key, without some act of taking possession, will not suffice (*Oastler v Henderson*, above, where Brett L.J. explained *Phené v Popplewell*, above; *Wallis v Hands* [1893] 2 Ch. 75; *Furnivall v Grove*, 8 C.B.N.S. 496; *Cannan v Hartley*, 9 C.B. 634; *Whitehead v Clifford*, 5 Taunt. 518).

Resumption of possession by the landlord without opposition by the tenant (*Walls v Acheson*, 3 Bing. 462).

Though cancellation of a lease is not, of itself, a surrender by operation of law (*Doe d. Courtail v Thomas*, 9 B. & C. 288), yet it may be important collateral evidence thereof (*Walker v Richardson*, 6 L.J. Ex. 229; *Davison v Gent*, 26 L.J. Ex. 122). The mere fact that the tenants of a house had vacated it while owing rent on it did not constitute a surrender by them of the tenancy (*Preston BC v Fairclough*, *The Times*, December 15, 1982). See also Law of Property Act 1925 (c.20) s.54(2).

“Surrender of a tenancy” (Landlord and Tenant Act 1954 (c.56) s.17) means an actual surrender and does not cover an agreement to surrender in the future (*Re Hennessey’s Agreement*; *Hillman v Davison* [1975] Ch. 252).

By accepting a surrender, a lessor waives his right to forfeiture, and under a forfeiture an under lessee, and all persons claiming under the lessee, lose their interest—*secus* under a surrender even though the lessor had the right to forfeit, which right he had not exercised: see *Great Western Railway v Smith*, 2 Ch. D. 235; *Mellor v Watkins*, L.R. 9 Q.B. 400; *Parker v Jones* [1910] 2 K.B. 32. See also Law of Property Act 1925 (c.20) ss.139, 150.

Surrender of shares, as to resolution for: see *Eichbaum v Chicago Grain Elevators* [1891] 3 Ch. 459.

Where a surrender of shares has the effect of reducing capital, it can only be supported when their forfeiture is justifiable and when it is, in effect, a form of forfeiture (*Bellerby v Rowland & Marwood’s SS Co* [1902] 2 Ch. 14). See also *Rowell v Rowell & Son Ltd* [1912] 2 Ch. 609.

“Surrender”, as regards stamp duty: see *Firth v Inland Revenue Commissioners* [1904] 2 K.B. 207, cited DISCHARGE.

(Finance Act 1900 (c.7) s.11). Portions payable after the death of a tenant for life and paid under a family arrangement within three years before his death, were held to have been “surrendered” within the section and therefore to be chargeable with estate duty (*De Trafford v Att-Gen* [1935] A.C. 280).

“Liable to be surrendered”: see *Re Galwey* [1896] 1 Q.B. 230.

“Surrender to custody” (Bail Act 1976 (c.63) s.6(1)). Once a defendant had reported to the appropriate official at the appropriate time he had surrendered to bail and was then in “custody” within the meaning of this section; notwithstanding that he had then left the building before his case was called (*DPP v Richards* [1988] 3 W.L.R. 153). A surrender into custody only occurs when the defendant himself surrenders or puts himself at the direction of the court or of an officer of the court (*R. v Central Criminal Court, Ex p. Guney*, *The Times*, February 1, 1994).

“Surrender or extinction” or prior interests: see EXTINCTION.

In s.12C of the Landlord and Tenant Act 1987 the reference to surrender includes a reference to a contract to surrender (*Kensington Heights Commercial Company Ltd v Campden Hill Developments Ltd* [2007] EWCA Civ 245).

See DEEMED TO HAVE BEEN SURRENDERED; INSTRUMENT OF SURRENDER.

SURROGATE. “Is he who is appointed in the stead of another, most commonly of a bishop or his chancellor” (*Termes de la Ley*).

SURROUNDING CIRCUMSTANCES. See *Kettle v Dunsker and Wakefield*, 43 T.L.R. 770.

SURVEILLANCE. Stat. Def., s.48(2)–(4) of the Regulation of Investigatory Powers Act 2000 (c.23).

SURVEILLANCE DEVICE. Stat. Def., s.48(1) of the Regulation of Investigatory Powers Act 2000 (c.23).

SURVEY

SURVEY. A demise of land at an acreage rent, “subject to survey”, means that the acreable contents shall be ascertained by actual measurement for the purpose of fixing the amount of rent (*Persse v Malcolmson*, Ir. Rep. 5 C.L. 572).

See VIEW; SUBJECT TO.

SURVEYOR. In Public Health Act 1875 (c.55), “surveyor” includes any person appointed by a rural authority to perform any of the duties of surveyor under this Act” (s.4). But the wide definition did not extend to the “surveyor” to be appointed by an urban authority under s.189, and “the surveyor”, who, in an urban district, had to make the report mentioned in s.16, did not include a person temporarily appointed to perform the duties of a surveyor and who was subject to dismissal at a week’s notice (*Lewis v Weston-super-Mare*, 40 Ch. D. 55). The meaning of “surveyor” in Public Health Act 1875, was adopted for the other Public Health Acts: see Public Health Act 1890 (c.59) s.11(3); Private Street Works Act 1892 (c.57) s.5. But in Metropolis Management Act 1855 (c.120) s.105, the phrase was “surveyor for the time being”, which possibly did not mean the permanent surveyor, but might include a surveyor appointed for a particular purpose, e.g. to apportion paving expenses (*Kendal v Lewisham*, 1 L.G.R. 416; 2 L.G.R. 31).

“Surveyor of highway” (Highways and Bridges Act 1891 (c.63) s.3) see *Hertfordshire CC v Barnet* [1902] 2 K.B. 48.

The individual members of a district council were not surveyors of highways, within Highway Act 1835 (c.50) s.46 (*Buckley v Hanson*, 77 L.T. 664).

The “surveyor or valuer” whose report as to the value of property will exonerate trustees if they “reasonably believe” him “to be an able, practical, surveyor or valuer” (Trustee Act 1893 (c.53) s.8(1); see Trustee Act 1925 (c.19) s.8(1)) must be one employed and instructed by the trustees in the very matter to which the report relates, and the report must advise the trustees as to the particular investment (*Re Walker*, 59 L.J. Ch. 386). See hereon *Shaw v Cates* [1909] 1 Ch. 389, and *Palmer v Emerson* [1911] 1 Ch. 758, cited INVESTMENTS.

“District surveyor”: see London Building Act 1894 (c. ccxiii) Pt 13, on which see *Westminster v Watson* [1902] 2 K.B. 717.

Stat. Def., Cathedrals Measure 1999 (No.1) s.35(1).

“County surveyor”: see COUNTY.

See OUTGOING SURVEYOR; QUANTITY SURVEYOR.

SURVIVE. “Survive” imports that the person who is to survive must be living at the death of the person whom, or at the happening of the event which, he is to survive (*Gee v Liddell*, L.R. 2 Eq. 341).

This case was followed in *Re Allsop, Cardinal v Warr* [1968] Ch. 39 where it was held that a bequest to such children of a particular class “as shall survive me” excluded all those born after the testator’s death, as survival connotes existence during the testator’s lifetime.

In *Gee v Liddell*, above, Romilly M.R. said, “My opinion is that the meaning of the word ‘survive’ or ‘survivor’ imports that a person who is to survive must be living at the time of the event which he is to survive. I have consulted several dictionaries on this subject. I have consulted Johnson and Richardson and the authorities cited by them; and in all instances it appears to me to mean to ‘outlive’, that is, to be alive at the time of a particular event, or the death of a particular person, which event or person the other is to survive. It is true that Dr Johnson puts as one of the meanings, ‘to live after another’ . . . But all the passages from the English writers cited tend to the

conclusion that the person who survives an event must be living at the time when that event takes place, and that 'to live after' is somewhat ambiguous in itself". On a context, "survive" has been construed "to live after" (*Re Clark*, 3 D.G.J. & S. 111; but see thereon per Chitty J., *Re Delany*, 39 S.J. 468, and per Buckley J., *Re Heath*, 48 S.J. 416). See *Reed v Braithwaite*, L.R. 11 Eq. 514; *Ranelagh v Ranelagh*, 1 L.J. Ch. 183; *Re Singh* [1914] W.N. 90.

Bequest, in remainder after life interests, for "surviving sister or sisters of my wife, or their heirs"; held, that "surviving meant surviving the testator (*Stannard v Burt*, 52 L.J. Ch. 355); see also *Spurrell v Spurrell*, 22 L.J. Ch. 1076. In a similar bequest, "surviving" was held to mean surviving the tenant for life (*Re Fox*, 13 W.R. 1013; see also *Littlejohns v Household*, 21 Bea. 29; *Re Benn*, 29 Ch. D. 839). And, besides, its natural meaning, "surviving" may mean "surviving by issue"—a stirpital surviving (*Re Bilham* [1901] 2 Ch. 169, commenting on *Waite v Littlewood*, 8 Ch. 70, *Lucena v Lucena*, 7 Ch. D. 255, *Re Benn*, 29 Ch. D. 889, and *Re Bowman*, 41 Ch. D. 531, cited SURVIVOR, but *Re Bilham* was distinguished in *Re Friend* [1906] 1 Ch. 47; see also *Morrison's Trustees v Ward*, 30 Sc. L.R. 823; *Lamont v Millar* [1921] W.N. 334.

A phrase such as "surviving children" in a will may be taken either in its natural sense as meaning those children alive at the testator's death or in some other, secondary sense. The natural sense is the one to be preferred and will yield to the secondary meaning only if the context shows that this would defeat the testator's intention. The fact that a fund is originally given in shares settled on stirpital trusts and that, on failure of the trusts in favour of one stirps, the share of that stirps is directed to accrue to the shares of the survivors of the original life tenants to be held on the trusts of their original shares, is not good grounds for holding that the testator intended the word "survivor" to bear a secondary meaning (*Re James's Will Trusts* [1962] Ch. 266).

A gift to a child, or other ISSUE, of a testator, does not LAPSE by death in the testator's lifetime if he or she leave issue, living at the testator's death, but shall take effect as if the death of the child or other issue of the testator had happened immediately after his death (Wills Act 1837 (c.26) s.33); therefore, where a testator directs that in case A (his daughter) shall "survive" him, her share shall be part of the funds comprised in her marriage settlement, and she dies in his lifetime leaving issue living at his death, the share intended for her becomes part of the settlement funds (*Re Hone*, 22 Ch. D. 663).

"Should E not survive", in a will, meant attain the age of twenty-one (*Re Hill* [1947] L.J.R. 681).

"If she shall survive her now intended coverture": see *Re Crawford* [1905] 1 Ch. 11.

"Surviving": as to the application of this and similar words to children *en venture sa mère*, see *Elliott v Joicey* [1935] A.C. 209. A gift to a class of individuals "surviving" means persons of that class living at the event in question (*Re Castle* [1949] Ch. 46). See also *Re Hodgson* [1952] 1 All E.R. 769.

See SURVIVOR; SURVIVING TRUSTEE.

SURVIVING CHILDREN. This phrase includes a sole surviving child (*Re Brown* [1896] W.N. 164). See hereon *Re M'Dougal*, 39 Sc. L.R. 375; *Re Watson*, 10 Sc. L.T. 388. See also SURVIVOR; CHILD.

SURVIVING HUSBAND. See *Bosworthick v Clegg*, 45 L.T.R. 438, cited HUSBAND.

SURVIVING SISTERS. See *Carver v Burgess*, 24 L.J. Ch. 401.

SURVIVING SPOUSE. “The issue in this appeal is simply whether the Appellant, Miss Latisah Ouaha, was properly to be regarded as ‘the surviving spouse’ of Mr Khawan Al-Faisal (‘Mr Al-Faisal’) when he died on 19 November 2010. . . . It seems to me that the question of whether a spouse under a valid foreign marriage might or might not constitute the surviving spouse for the purposes of paragraph 2(1) could raise some difficult points of law that would require full argument and maybe evidence before they could be determined. . . . In my judgment, these authorities, taken together with *Dukali v Lamrani* to which I have already referred, demonstrate, as is obvious from the context of paragraphs 2(1) and 2(2) that the term ‘the surviving spouse’ has rather more formality about it than the term ‘a person who was living with the original tenant as his or her wife or wife or husband’ in paragraph 2(2)(a). It is not, therefore, to be given the flexible meaning that was adopted by the Court of Appeal for the word “family” in then equivalent provisions. (See *Brock v Wollams* [1949] 2 KB 388 at page 394 per Bucknill LJ and page 395 per Cohen LJ). The flexibility in the schedule to the Rent Act 1977, as it seems to me and as was pointed out by Lord Slynn in the passage that I have cited, is provided by paragraph 2(2) which refers to persons ‘living with the original tenant as his or her wife or husband’. That provision did not, of course, apply here because Mr Al-Faisal had, as the judge found, left the Appellant in 2002 or 2003. . . . In my judgment, the judge was right because there was no formal marriage ceremony valid under English law upon which the Appellant was able to rely. I would prefer to leave open whether the judge was right to hold that the only way in which a person can qualify as ‘the surviving spouse’ for the purposes of paragraph 2(1) is by showing that they underwent a ceremony of marriage valid under the Marriage Acts. It may be that some or all foreign ceremonies of marriage would allow a person to qualify, but we do not need to decide that point today. What I can say is that the Appellant, on the evidence before the judge, never went through any valid ceremony of marriage recognised in the country in which the ceremony took place. Accordingly, she did not, I think, reach the starting blocks. The words ‘the surviving spouse’ as used in paragraph 2(1) seem to me obviously to contemplate in relation to a person relying upon a marriage ceremony a person who, by that ceremony, became legally the wife or husband in the country in which the ceremony took place.” (*Northumberland & Durham Property Trust Ltd v Ouaha* [2014] EWCA Civ 571.)

SURVIVING TRUSTEE. See *Sharp v Sharp*, 2 B. & Ald. 405. Cp. CONTINUING TRUSTEE, and see now Trustee Act 1925 (c.19) s.36.

A “surviving trustee”, whose representatives may appoint a new trustee (Conveyancing Act 1881 (c.41) s.31(1); see now Trustee Act 1925 (c.19) s.36), must survive not only his nominated colleagues but also his testator (*Nicholson v Field* [1893] 2 Ch. 511). See also LAST.

SURVIVOR. “Survivor” is “a word which has caused perhaps more difficulty in the interpretation of wills than any other in the language” (per Rigby L.J., *Re Pickworth* [1899] 1 Ch. 642, cited EITHER).

“If there is a life estate followed by a gift to a number of persons or the survivors of them, the general rule of construction is that the word ‘survivors’ means those who survive the tenant for life; if there is not a life estate, then prima facie as a general rule it refers to those who survive the testator” (per Cotton L.J., *Ralph v Carrick*, 11 Ch. D. 873); or, as it may be otherwise stated, “the word ‘survivors’ refers commonly to the time of division” (per Kay J., *Re Mortimer*, 54 L.J. Ch. 415). This is sometimes called the rule in *Cripps v Wolcott* (4 Mad. 11); and it applies as well to realty as to

personalty (*Re Gregson*, 34 L.J. Ch. 41; *Howard v Collins*, L.R. 5 Eq. 349). See also as to period of survivorship, 3 Jarm. (8th edn) 1983 et seq.; Theobald (10th edn), 476, 485; and for a context leading to the same conclusion as *Cripps v Wolcott* see *Wordsworth v Wood*, 1 H.L. Cas. 129.

“Survivors”, generally speaking, includes “survivor”, and should be read as equivalent to “survivors or survivor” (see *Re Mortimer*, above; *Hearn v Baker*, 2 K. & J. 383; see also SURVIVING CHILDREN). “Powers conferred on . . . trustees ‘and the survivors of them’ were held not to be exercisable by a single survivor” (Lewin (15th edn), 325, citing *Hibbard v Lamb*, 1 Amb. 309; see now *Re Smith* [1904] 1 Ch. 139). See also SURVIVING TRUSTEE.

“The question whether the word ‘survivor’ (in a will) is to be read as ‘other’ has been the subject of innumerable cases; but there is one never-failing guide to all the authorities, viz.—it is the duty of the court to ascertain what the meaning of the testator is, and if it can satisfy itself that the word ought to be read as ‘other’, it is right to substitute the one word for the other” (per Bacon V.C., *Re Johnson*, 53 L.J. Ch. 1117); but “when unexplained by other parts of the will, it is to be interpreted according to its strict and literal meaning” (3 Jarm. (8th edn), 1961). See also *King v Frost*, below; *Inderwick v Tatchell*, below; *Garland v Smyth* [1904] 1 Ir. R. 35; *Re Mears* [1914] 1 Ch. 694; *Powell v Hellicar* [1919] 1 Ch. 138.

For an elaborate discussion of the cases hereon, see 3 Jarm. (8th edn) 1961–1976; see also Wms. Exs. (13th edn), 882; Theobald (10th edn), 480–483. See also *Crowther v Evans*, 13 L.T. 271; *Waite v Littlewood*, 8 Ch. 70; *Lucena v Lucena*, 7 Ch. D. 225; *Re Horner*, *Pomfret v Graham*, 19 Ch. D. 186; *Re Benn*, 29 Ch. D. 839; *Re Palmer*, L.R. 19 Eq. 320; *Re Smith*, 42 Sc. L.R. 657, and cases there cited; *Paterson’s Trustees v Brand*, 31 Sc. L.R. 200; cp. *Ward v Lang*, 30 Sc. L.R. 823, followed in *Belfrage v Monteith*, 31 Sc. L.R. 499; *Re Bilham* [1901] 2 Ch. 169, cited SURVIVE. “In *Re Palmer* I referred to several cases all of them authorities in favour of reading ‘survivor’ as ‘other’, when it was requisite to do so in order to give effect to the intention. There is no magic in the word ‘survivor’” (per Malins V.C., *Cross v Maltby*, L.R. 20 Eq. 382).

Where there is a gift to several, or to a class, as tenants in common in tail, with remainder as to the share of each to the ‘survivors’ or ‘surviving’ devisees in tail, with a limitation over on failure of issue of all the devisees, the words ‘survivor’ or ‘surviving’ will be construed as ‘other’, so as to create cross-remainders among the devisees by express limitation; either in a deed or will (*Doe v Wainewright*, 5 T.R. 427; *Cole v Sewell*, 2 H.L. Ca. 186; *Smith v Osborne*, 6 H.L. Cas. 375).

But in *Re Bowman*, *Whytehead v Boulton*, (41 Ch. D. 531) Kay J. said, “It seems to me that the decisions establish the following propositions: (i) Where the gift is to A, B, and C equally, for their respective lives, and after the death of any to his children, but if any die without children to the survivors for life, with remainder to their children, only children of survivors can take under the gift over; (ii) if, to similar words, there is added a limitation over if all the tenants for life die without children, then the children of a predeceased tenant for life participate in the share of one who dies without children after their parent; (iii) they also participate, although there is no general gift over, where the limitations are to A, B, and C equally, for their respective lives, and after death of any of his children, and, if any die without children, to the surviving tenants for life and their respective children in the same manner as their original shares”.

See this last proposition acutely examined and dissented from, 33 S.J. 572; see also *Re Bowman*, above, distinguished in *Re Rubbins*, 79 L.T. 313, and criticised in *Re Robson* [1899] W.N. 260. *Re Bowman* was also dissented from by Cozens-Hardy L.J., *Harrison v Harrison* [1901] 2 Ch. 136; and by CA in *Inderwick v Tatchell* [1901] 2 Ch. 738, which last case was affirmed in House of Lords [1903] A.C. 120.

When “survivor” “is applied to a class of persons, and individuals of that class are named, the natural and obvious meaning of the word is the longest liver of those who are named” (per Westbury C., *Taaffe v Conmee*, 10 H.L. Cas. 77; see that case discussed and distinguished, *Foley v Gallagher*, 2 L.R. Ir. 389).

In *Re Hill to Chapman*, (53 L.J. Ch. 541; 54 L.J. Ch. 595), an unsuccessful attempt was made to induce the court to read “survivor” as equivalent to “longest liver”: see also *Re Pickworth*, 68 L.J. Ch. 328, cited EITHER. The rule, in this connection, is thus stated by Turner L.J., *White v Baker*, 29 L.J. Ch. 577: “where there is a bequest to A for life, and after his death to B and C, ‘or the survivor of them’, some meaning must be attached to the words ‘the survivor’. They may refer to any one of three events—

- to one of the persons named surviving the other;
- to one of them only surviving the testator; or
- to one of them only surviving the tenant for life;

and in the absence of any indication to the contrary they are taken to refer to the latter event, as being the more probable one to have been referred to”. See judgment of Cotton L.J., *Re Hill to Chapman*, above, for a criticism on *White v Baker*; see also *Scurfield v Howes*, 3 Bro. C.C. 90; *Re Hunter*, L.R. 1 Eq. 295. See *Re Poultney* [1912] 2 Ch. 451, where the above statement of Turner L.J., was approved and followed by Cozens-Hardy M.R.

The word “survivors” “does not mean ‘longest livers’ in the general sense, but those who are living when the particular event contemplated happens” (per Kay J., *Re Mortimer*, *Griffiths v Mortimer*, 54 L.J. Ch. 415). On the words of the will under consideration in *Re Mortimer* it was held that on the death of the last survivor of a class of tenants for life who were to take inter se by survivorship, the capital fell into the residue and did not belong to the estate of such last survivor. The learned judge followed *Nevill v Boddam* (29 L.J. Ch. 738) and *Re Corbett* (29 L.J. Ch. 458); and commented on *Maden v Taylor* (45 L.J. Ch. 569) and *Davidson v Kimpton* (18 Ch. D. 213). See also per North J., *Askew v Askew* (57 L.J. Ch. 629), and per Privy Council, *King v Frost* (15 App. Ca. 548). But in *Re Roper* (41 Ch. D. 409), Chitty J. differed from *Re Mortimer*, *Re Corbett*, and *Askew v Askew* and, following *Maden v Taylor* and *Davidson v Kimpton*, construed “survivors” as “longest livers”; see also *Browne v Rainsford*, Ir. Rep. 1 Eq. 384; per Monroe J., *Re Hutchins*, 19 L.R. Ir. 223. In *Re Ranelagh v Ranelagh* (41 W.R. 549); Chitty J. repented of his decision in *Re Roper* and followed *King v Frost*.

In *Crozier v Fisher* (6 L.J.O.S. Ch. 118), “survivors”, in a bequest to children, was contextually held to mean surviving so as to attain their respective ages of 21.

As to whether a limitation to A, B, and C, “and the survivors or survivor of them and the heirs of such survivors”, makes A, B, and C joint-tenants for life, with a contingent remainder in fee to the survivor, see 2 Jarm. (8th edn) 1785; as to the effect of a limitation to A, B, and C “as joint tenants and not as tenants in common, and to the survivor or longest liver to them his heirs and assigns”, see *Quarm v Quarm* [1892] 1 Q.B. 184.

See SURVIVE.

SURVIVORSHIP. See **BENEFIT OF SURVIVORSHIP.**

“Presumption of survivorship”: see **PRESUMPTION**, para.(9).

SUSCEPTIBLE. Goodwill is “a matter susceptible of valuation” within partnership articles (*Steuart v Gladstone*, 10 Ch. D. 626).

SUSPECT. “Suspects that an arrestable offence had been committed” (Criminal Law Act 1967 (c.58) s.2(4)). Suspicion for the purposes of this section is a state of conjecture or surmise where proof is lacking, and is not to be confused with the actual provision of evidence (*Holtham v Commissioner of Police for the Metropolis*, *The Times*, November 28, 1987).

“The Director may investigate any suspected offence” (Criminal Justice Act 1987 (c.38) s.1(3)). A suspected offence does not cease to be “suspected” once charges are preferred, so that a suspected offender who has been charged can still be “investigated” under this section (*R. v Director of the Serious Fraud Office, Ex p. Saunders* (1988) 138 New L.J. 243).

“What then does the word ‘suspecting’ mean in its particular context in the [Criminal Justice Act 1988]? It seems to us that the essential element in the word ‘suspect’ and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice. But the statute does not require the suspicion to be ‘clear’ or ‘firmly grounded and targeted on specific facts’, or based upon ‘reasonable grounds’. To require the prosecution to satisfy such criteria as to the strength of the suspicion would, in our view, be putting a gloss on the section. We consider therefore that, for the purpose of a conviction under s.93A(1)(a) of the 1988 Act, the prosecution must prove that the defendant’s acts of facilitating another person’s retention or control of the proceeds of criminal conduct were done by a defendant who thought that there was a possibility, which was more than fanciful, that the other person was or had been engaged in or had benefited from criminal conduct. We consider that, if a judge feels it appropriate to assist the jury with the word ‘suspecting’, a direction along these lines will be adequate and accurate.” (*R. v Da Silva* [2006] EWCA Crim 1654 per Longmore L.J. at [13].)

As to suspicion in the civil context, see *K Ltd v National Westminster Bank Plc* [2006] EWCA Civ 1039.

Suspect compared to accused: see **ACCUSED.**

See **REASONABLE GROUNDS TO SUSPECT.**

SUSPECTED INTERNATIONAL TERRORIST. Stat. Def., s.21(5) of the Anti-terrorism, Crime and Security Act 2001 (c.24). See also PL [2002] pp.210–20.

SUSPECTED PERSON. The power to arrest without warrant a “suspected person” (Vagrancy Act 1824 (c.83) s.4, as amended by the Prevention of Crimes Act 1871 (c.112) s.15, and the Penal Servitude Act 1891 (c.69) s.7) is confined to arresting persons who are already “suspected persons” before the occasion on which the power is sought to be exercised (*Ledwith v Roberts* [1937] 1 K.B. 232; *Stevenson v Aubrook* [1941] 2 All E.R. 476). See *Rawlings v Smith* [1938] 1 K.B. 675; *R. v Fairbairn* [1949] 2 K.B. 690; cf. also *Gorman v Barnard* [1940] 2 K.B. 570; *Cohen v Black*, 111 L.J.K.B. 573. A conviction five years before does not make the accused a “suspected person” (*Bridge v Campbell*, 63 T.L.R. 470); it is not essential that police officers making an arrest should know of the accused’s previous convictions (*R. v Clarke* [1950] 1 K.B. 523; *Easton v Johnstone* [1947] V.L.R. 106). See also *Pyburn v Hudson* [1950] 1 All E.R. 1006. To support a conviction under this section the acts which

SUSPEND

caused the defendant to be a "suspected person" and the act which causes him to be arrested must be separate acts but need not be different in kind (*Cosh v Isherwood* [1968] 1 W.L.R. 48).

"Suspected persons" (Vagrancy Act 1824 (c.83) s.4). Two persons who were seen to try the handles of four parked cars, and were apprehended when they returned to the first, were not "suspected persons" for the purposes of this section as up to the time of trying the door handles they had given rise to no suspicion. These words apply only to persons who, apart from the particular occasion, bring themselves into the class of suspected persons by reason of their antecedent conduct (*Fraser v Heatly* (1966) S.L.T. 263).

"Suspected person or reputed thief": see *Hartley v Ellnor*, 86 L.J.K.B. 938.

SUSPEND. Where there is a clause in a lease that in case of fire the rent shall be "suspended" until the premises are reinstated, it might be contended that "suspended" means only "postponed"; but more reasonably it means "temporarily released". In this sense the word is obviously used in the following passage from the judgment in *Morrison v Chadwick* (7 C.B. 283): "The eviction by a landlord of his tenant from a part of the premises creates a suspension of the entire rent during the continuance of the eviction until the tenant enters and resumes the possession—see the authorities cited in 1 Wms. Saund. 204, fn. 2" (see also **SUSPENSE**). But it would avoid dispute to provide that the rent shall "cease and be suspended" or shall "be suspended and cease to be payable".

Notice by a debtor that he "has suspended, or is about to suspend, payment" (Bankruptcy Act 1883 (c.52) s.4(1)(h); see now Bankruptcy Act 1914 (c.59) s.1(1)(h)): "To 'suspend', in its natural signification, rather means something which may not be permanent than that which is. A fortiori, of course, a perpetual stoppage of payment would be a suspension, and something more; but to say that 'suspension' can mean nothing in this context but a necessarily permanent stoppage of payment, is a proposition to which I cannot agree" (per Lord Selborne, *Crook v Morley* [1891] A.C. 316). See also **NOTICE**.

Semble, the execution by a debtor of a deed of arrangement was a "suspension of payment" within Bankruptcy Act 1849 (c.106) ss.211, 225 (cp. now Bankruptcy Act 1914 (c.59) s.16) (*Phillips v Surridge*, 9 C.B. 743).

As to the old doctrine, an action personal once suspended always suspended, see *Ford v Beech*, 11 Q.B. 867, and cases there cited. Cp. **FORBEAR**.

"Suspension" (Essential Work (General Provisions) (No.2) Order 1942 (No.1594) art.4(3)): suspension by an employer of a workman for indiscipline which was recognised by this order was in truth dismissal mitigated, at the discretion of the employer, by a promise to re-employ (*Marshall v English Electric Co*, 61 T.L.R. 379).

When applied to a contract of employment, "suspend" means the workman ceases to be under any present duty to work, and the employer ceases to be under any consequential duty to pay (*Bird v British Celanese Ltd* [1945] K.B. 336).

"Suspension of employment" (Industrial Relations Act 1971 (c.72) s.167(1)(b)) does not refer to a mere suspension from duty but to temporary discontinuance of both work and pay under a contract which permits such discontinuance whilst the contract of employment remains in force (*Cory Lighterage v Transport and General Workers Union* [1973] 2 All E.R. 558).

Cp. **POSTPONE**; **STOP**.

SUSPENSE. “‘Suspension’ or ‘suspense’ is a temporal”, i.e. temporary, “stop of a mans right” (Cowell).

“Suspense commeth of *suspenseo*, and in legall understanding is taken when a seigniorie, rent, profit appender, etc. by reason of unitie of possession of the seigniorie, rent, etc. and of the land out of which they issue, are not *in esse* for a time, *et tunc dormiunt*, but may be revived or awaked. And they are said to be extinguished when they are gone for ever, *et tunc moriuntur*, and can never be revived; that is, when one man hath as high and perdurable an estate in the one as in the other” (Co. Litt. 313A). As to suspension, see *Burton v Barclay*, C.P. 239, SUSPEND; cp. MERGER.

Where beneficial interests in property vested in the Custodian of Enemy Property were by virtue of the Trading With the Enemy Act 1939 (c.89) s.7, placed in “statutory suspense”, their existence was preserved but they could not be presently asserted or enforced in the courts (*Banks voor Handel en Scheepvaart NV v Slatford (No.2)* [1952] 2 T.L.R. 861).

“Suspension in water”: see SOLID MATTER.

As to suspension of the clergy, see Phil. Ecc. Law, 1072.

SUSPENSION. See EXPULSION.

SUSTAIN. See UPHOLD.

“Sustain a loss”: See LOSS.

SUSTAINABLE DEVELOPMENT. “6. The relevant national policies are set out in the NPPF, in which ‘sustainable development’ is the key concept. There is no specific definition of ‘sustainable development’, but it is to be defined in terms of development which meets the needs of the present without compromising the ability of future generations to meet their own needs. That is reflected in the first words of the Ministerial Foreword to the NPPF, which state:

‘The purpose of planning is sustainable growth. Sustainable means ensuring that better lives for ourselves don’t mean worse lives for future generations. Development means growth. We must accommodate the new ways in which we will earn our living in a competitive world. We must house a rising population . . .’ (*Milwood Land (Stafford) Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 1836 (Admin).)

SUSTAINABLE MODES OF TRAVEL. Stat. Def., “modes of travel which the authority consider may improve either or both of the following—(a) the physical well-being of those who use them; (b) the environmental well-being of the whole or a part of their area” (Education Act 1996 s.508A(3) inserted by Education and Inspections Act 2006 s.76).

SUSTAINED. “Costs sustained by reason of”: see BY REASON.

Compared to CAUSED: *Durham v BAI (Run Off) Ltd* [2008] EWHC 2692 (QB).

SUSTAINED OR CONTRACTED. See Employers’ Liability Insurance “Trigger” Litigation: *BAI (Run Off) Ltd v Durham* [2012] UKSC 14.

SWALLETS. “Funnel-shaped fissures in the rock forming the Mendip Hills” (Dart, Vendor and Purchasers (6th edn), 416).

SWEAR. Stat. Def., Interpretation Act 1978 (c.30) Sch.1.

See OATH; PERJURY.

SWEATING. Exception, in a bill of lading, exonerating the shipowners from responsibility for “sweating, . . . explosion, heat, fire at sea or on shore”, means as regards “sweating”, damage from moisture dropping on to the cargo, (e.g. maize) from condensation of evaporated moisture in the hold, and does not include the general

SWEEP

heating of the cargo, though accompanied by moisture, or wet to the cargo from contact with the iron of the ship; and, as regards "heat" (having regard to its position between "explosion" and "fire at sea or on shore") means heat from some extraneous source, and not heat from contact with moisture or from the cargo's own spontaneous combustion (*The Pearlmoor* [1904] P. 286).

SWEEP. See EVENT; SUBSCRIPTION OR CONTRIBUTION.

SWEEPAGE. See HERBAGE.

SWERVE. See *The Olympic and HMS Hawke* [1913] P. 214.

SWINDLER. A swindler is "a cheat, one who lives by cheating" (Jacob). See hereon *Hewson v Cleeve* [1904] 2 Ir. 536.

"Every chaindropper, thimble, loaded dice player, and other swindler of that or any similar description" (Aberdeen Police and Waterworks Act 1962 (c. cciii) s.240): see *Melvin v Lamb*, 28 Sc. L.R. 49.

See CHEAT; TOUT.

SWING BRIDGE. Stat. Def., Highways Act 1980 (c.66) s.329.

SWOLING. A swoling, or suling, of land "is the same with *Carucata terræ*" (Cowel). See CARUCATA.

SWORN APPRAISER. "Sworn appraiser", e.g. by whom a distress under the Tithe Act 1836 (c.71), had to be valued, must be reasonably competent, but need not be professional, appraisers (*Roden v Eyton*, 6 C.B. 427).

See APPRAISER.

SWORN DEPOSITIONS. In extradition proceedings the unsworn statements of alleged accomplices were accepted as "sworn depositions" within the meaning of art.X of the Extradition Treaty (Sweden and Norway) Order 1873, as, after making the statements, the accomplices had been taken before a court and, having been reminded of the penalties for giving false evidence, had acknowledged the statements as true (*R. v Governor of Pentonville Prison Ex p. Singh* [1981] 1 W.L.R. 1031).

SYLVA. "'*Sylva caedua*', as a rule, is equivalent to coppice" (per Bowen L.J., *Dashwood v Magniac* [1891] 3 Ch. 306, cited TIMBER). See also Prohibition to spiritual courts Act 1370 (45 Edw. 3, c.3); SILVA CÆDUA.

SYMBOL. SEE TRADE-MARK.

SYNDICATE. Semble, "syndicate" is not equivalent to firm, company, or partnership; its use in connection with a marine underwriting will not convert a liability, otherwise several, into a joint liability (*Tyser v Shipowners' Syndicate* [1896] 1 Q.B. 135).

Probably "syndicate" first came into the law relating to companies in *New Sombrero Co v Erlanger*, 3 App. Cas. 1218, which see as to the liabilities of a syndicate in promoting a company. See also *Re Lady Forrest Co* [1901] 1 Ch. 582; *Re Leeds & Hanley Theatres* [1902] 2 Ch. 809.

SYNODAL. "Is a tax paid in money to the bishop or his archdeacon, by the inferior clergy, at their Easter visitation" (Termes de la Ley).

SYSTEM. A single instance of avoidance of surtax could not be said to be systematic and not exceptional within s.33(4) of the Finance Act 1927 (c.10) (*Bilsland v Inland Revenue Commissioners* [1936] 2 K.B. 542).

"Systems of working the mine" (Mines and Quarries Act 1954 s.34(1)(a)(i)). These words relate to the method of mining the coal, and not to the actual machinery and plant being used (*Lister v National Coal Board* [1970] 1 Q.B. 228).

Death from causes “arising within the system of the insured”: see ARISING; SECONDARY.

SYSTEMIC. “The adjective ‘systemic’ may mean ‘systematic’; that is to say something which is ‘arranged or conducted according to a system, plan, or organised method’ (Shorter Oxford English Dictionary sub nom ‘systemic’ and ‘systematic’). The court notes the reference in its remit being to determine “how systemic or widespread” the problem is, but it is not immediately clear whether these two adjectives are to be regarded as synonymous. It will proceed on the basis that if corruption is ‘widespread’ in a judicial system, it can properly be regarded as systematic and ‘systemic’.” (*Fatjon Kapri v Her Majesty’s Advocate (for the Republic of Albania)* [2014] ScotHC HCJAC 33.)

T

TABERNACLE. Semble, a tabernacle for the reception of the reserved sacrament is not a lawful church ornament (*Kensit v St. Ethelburga* [1900] P. 80).

TABLE. A cylindrical piece of marble 3ft 5ins high, eight feet in diameter and 10 tons in weight can be a “table” for the purposes of Canon F2 of the Revised Canons Ecclesiastical (*Re St. Stephen Walbrook* [1987] 2 All E.R. 578).

TABLE MEAL. Stat. Def., “a meal eaten by a person seated at a table, or at a counter or other structure which serves the purpose of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure serving the purpose of a table” (Licensing Act 2003 (c.17) s.159).

TABLEAUX VIVANTS. See *Hanfstaengl v Empire Palace* [1894] 3 Ch. 109, cited COPY.

TACITURNITY. “It seems appropriate to deal first with the arguments in support of the plea of moraū taciturnity and acquiescence. The most recent authoritative dicta on the requirements for such a plea to be sustained is that in *Somerville v Scottish Ministers* 2007 SC 140. The First Division there set out the meaning of the words of the plea as follows (at para 94) :—‘Mora, or delay, is a general term applicable to all undue delay (see Bell, Dictionary, sv “Mora”). Taciturnity connotes a failure to speak out an assertion of one’s right or claim. Acquiescence is silence or passive assent to what has taken place. For the plea to be sustained, all three elements must be present. In civil proceedings delay alone is not enough . . . we would emphasise that prejudice or reliance are not necessary elements of the plea. At most, they feature as circumstances from which acquiescence may be inferred. By its nature, acquiescence is almost always to be inferred from the whole circumstances, which must therefore be the subject of averment to support the plea.’” (*Buzzwors Leisure Ltd, Re Application for Judicial Review* [2011] ScotCS CSOH 146.)

TACK. “Tack” is the Scottish term for lease; but see discussion by counsel, *Sweetmeat Co v Inland Revenue Commissioners*, 64 L.J.Q.B. 88.

“A fearme, in the north parts, is called a tacke” (Co. Litt. 5A). See FARM.

To take in cattle to tack, is to AGIST them.

Tacking a mortgage was the doctrine that enabled a mortgagee who was secured by the legal estate to tack on to that security another security which he held on the same property and so give the latter security priority over a mesne incumbrance prior in date thereto, if he took his other security without notice of the mesne incumbrance to be so displaced. Cp. CONSOLIDATE. See now Law of Property Act 1925 (c.20) s.94; Land Registration Act 1925 (c.21) s.30.

The doctrine did not extend to lands in Yorkshire (Yorkshire Registries Act 1884 (c.54) s.16).

TACKING. “‘Tacking’ describes the means by which a creditor, with a charge securing an original advance, is able to use the charge to secure a further advance and so obtain priority for the further advance over sums secured by any second or

TACKLE

subsequent charge. Because of the potential prejudice to the interests of the holders of second or subsequent charges, first equity and then statute have severely restricted the circumstances in which tacking will be permitted. The issue on this appeal is whether, in the particular circumstances of the case, any further advances were made by the holder of first charges on various properties. Only if the proper legal conclusion on the undisputed facts is that further advances were made, will the restrictions on tacking be engaged.” (*Urban Ventures Ltd v Thomas* [2016] EWCA Civ 30.)

TACKLE. “It has been said that by the words ‘tackle, furniture, apparel, and all other her instruments, thereunto belonging’, the boats of a ship are not transferred (Molloy, *De Jure Mar.*, B. 2, c.1, s.8). And it has been held that ballast is not part of the furniture of a merchant ship (*ibid.*, *Kynter’s Case* 1 Leon. 46); and that under the words ‘Stores, tackle, apparel, etc.’, kintlage does not pass (*Lano v Neale* 2 Starkie, 105)” (1 Maude & P. (4th edn), 53, fn. (x)). See FURNITURE.

An insurance upon a ship, employed in the Greenland trade, on “ship, tackle, apparel, and furniture”, does not by the usage of the trade cover the fishing tackle (*Hoskins v Pickersgill*, 3 Doug. 222).

As regards a bill of lading, shipowners’ liability to cease “when the goods are free of the ship’s tackle”: see *Chartered Bank of India v British India Steam Navigation Co*, 53 S.J. 446.

As to goods “taken from the ship’s tackle directly on their coming to hand”: see *The Coahoma County* [1924] P. 95.

“Within reach of the ship’s tackle” (in charterparty): see *Dampselskab Svendborg v London, Midland & Scottish Railway* [1930] 1 K.B. 83. See also *The Aldington Court* [1932] P. 21; *British Oil Mills v Moor Line*, 41 Com. Cas. 53.

TAG-ALONG RIGHTS. Stat. Def., “tag-along rights”, in relation to shares in a company, means the right of the holders of a minority of the shares to sell their shares, where the holders of the majority are selling theirs, on the same terms as those on which the holders of the majority are doing so, Employment Rights Act 1996 s.205A as inserted by the Growth and Infrastructure Act 2013 s.35.

TAIL. To hold in fee tail, or in tail, is “where a man holdeth certaine lands or tenements to him and to his heires of his body begotten” (*Termes de la Ley*); that is a general tail. A special tail is one that “is restrained to certain heirs of his body, and does not go to all of them in general” (Wms. R.P. (24th edn), Pt II, Ch.3), e.g. heirs of his body by a specified woman, or tail male. See hereon Litt. ss.13–31; Co. Litt. 18B–27B; 2 Bl. Com. 110–119; WESTMINSTER.

“Tail male”: see *Trevor v Trevor*, 1 H.L. Cas. 239. In *Re Alexander*, 54 S.J. 602, “tail male” was read as a clerical error, and included a person who had an estate in tail general. See Law of Property Act 1925 (c.20) ss.130–133.

“Special tail male”: see *Pelham-Clinton v Newcastle*, 69 L.J. Ch. 875 affirmed [1902] 1 Ch. 34; affirmed House of Lords [1903] A.C. 111. See Law of Property Act 1925 (c.20) ss.60, 131.

See TENANT IN TAIL.

TAILBOARD. A bridging plate between a car transporter and a trailer is not a “tailboard” within the meaning of reg.3(1) of the Motor Vehicles (Construction and Use) Regulations 1978 (SI 1978/1017). It has to be considered as part of the length of the trailer for the purposes of reg.73(1) (*Corp v Toleman International* [1981] R.T.R. 385).

TAINI. "*Taini*, or *thaini mediocres*", in Domesday, "were freeholders, and sometime called *milites regis*, and their land called *tainland* But *thainus regis* is taken for a baron" (Co. Litt. 5B; see further *Termes de la Ley*, *Thanus*). See TAINLAND.

TAINLAND. "In the book of Domesday, land holden by knight's service was called *tainland*, and land holden by socage was called *reveland*" (Co. Litt. 86A). But at 5B, Co Litt., it is said that land of freeholders generally was called *tainland*: see TAINI.

TAKE. "Take . . . such steps . . . as may be necessary for keeping . . . secure" (Mines and Quarries Act 1954 (c.70) s.48(1)). These words do not impose an absolute duty. If there is no expectation of danger there is no duty under this section (*Tomlinson v Beckermet Mining Co* [1964] 1 W.L.R. 1043).

"Taken from him" (Magistrates' Courts Act 1980 (c.43) s.48). These words apply only to property found on a person, and not to property taken from his home (*R. v Southampton Magistrates' Court, Ex p. Newman* [1988] 3 All E.R. 669).

"Bird . . . had not been . . . taken" (Wildlife and Countryside Act 1981 (c.69) s.1(3)(a)). "Taken" means captured and contemplates a live bird (*Robinson v Everett* [1988] Crim. L.R. 699).

A person took a girl out of her mother's lawful control for the purpose of the offence of abduction under s.2 of the Child Abduction Act 1984 (c.37) if his actions were an effective cause of the child's accompanying him: his actions do not need to have been the sole cause, nor does it matter that consent was one of the other causes (*Regina v A.* [2000] 1 W.L.R. 1879, CA).

"Take" a point of law: see RAISE.

"Taking the case as a whole": see AS A WHOLE.

See ACQUIRE; ACQUISITION OF LANDS; INHERIT; COMPULSORY POWERS; PURCHASE.

TAKE AND APPROPRIATE. The power to guardians "to take and appropriate" a pauper's property to "reimburse themselves" the expenses of his burial and 12 months' maintenance (Poor Law Amendment Act 1849 (c.103) s.16) only constituted them ordinary (not preferential) creditors, and their claim did not interfere with the right of the pauper's executor to retain in respect of his own claim (*Laver v Botham* [1895] 1 Q.B. 59); nor did the power affect the common law right of the guardians to recover the property of the pauper (though lunatic or infant) expenses necessarily incurred for his benefit, the limit being six years (*Re Clabbon* [1904] 2 Ch. 465; *West Ham v Pearson*, 62 L.T. 638) such expenses included not only the cost of his boarding but also a reasonable proportion of establishment charges and things of that kind (see *Islington Guardians v Biggenden* [1910] 1 K.B. 105; but see *Pontypridd Guardians v Drew* [1927] 1 K.B. 214).

TAKE AND CARRY AWAY. See TAKE.

TAKE AND DRIVE AWAY. See DRIVE; TAKE.

TAKE AWAY. Not to "take away, or do business for", A's clients: see CLIENT. See LEAD AWAY.

TAKE CARE. "Take care of and provide": see PRECATORY TRUST.

TAKE DOWN. A house or building, or its front, was not "taken down in order to be rebuilt or altered" (Public Health Act 1875 (c.55) s.155), unless substantially the whole was removed; each case depended on its own circumstances, but a large structural alteration, involving the removal of no more than two-thirds of the house or building or front, was not a "taking down" within the section (*Att-Gen v Hatch* [1893] 3 Ch. 36). Cp. NEW BUILDING.

TAKE

See DEMOLISH; UNNECESSARY INCONVENIENCE.

TAKE EFFECT. A testator devised to his son in fee simple certain real estate, and proceeded: "These devises shall take effect upon my said son attaining the age of 25 years". Held, that the devises vested at the testator's death, subject to being divested on the death of the son under 25. "Their Lordships see no reason for doubting that the established rule for the guidance of the court in construing devises of real estate is that they are held to be vested unless a condition precedent to the vesting is expressed with reasonable clearness" (*Bickersteth v Shanu* [1936] A.C. 290).

Resignation of trustee "to take effect": see *Fullarton's Trustees v James*, 33 Sc. L.R. 136, cited RESIGNATION; SUBSISTING.

TAKE IN. See AGIST.

TAKE IN EXECUTION. "The ordinary meaning of 'taken in execution' is that the goods have been seized by the sheriff; and, in ordinary language, a sheriff who has seized goods under a *fiери-facias* is said to have 'taken them in execution'", e.g. as the phrase was used in *St. Marylebone Improvement Act 1794* (c.73) s.195 (per Bigham J., *Marylebone Vestry v Sheriff of London* [1900] 1 Q.B. 114; affirmed [1900] 2 Q.B. 591).

The protection given to landlords by Landlord and Tenant Act 1709 (c.18) s.1, that no goods should "be taken by virtue of any execution" until the rent was paid, only applied where the goods were removed or sold (*White v Binstead*, 22 L.J.C.P. 115; *Cocker v Musgrave*, 9 Q.B. 223); because that statute was "only intended to give a landlord a remedy when deprived of his rights by removal" (per Jervis C.J., *White v Binstead*, above; see further per Williams L.J., *Marlebone Vestry v Sheriff of London*, above).

See EXECUTION. Cp. LEVY. See *Cox v Harper* [1910] 1 Ch. 480.

TAKE IN SATISFACTION. See *Re Cosier* [1897] 1 Ch. 325, cited SATISFACTION.

TAKE INTO ACCOUNT. For the different senses in which the expression "to take into account" may be used, see *Metropolitan Water Board v St. Marylebone* [1923] 1 K.B. at 99.

"There shall be taken into account . . . rights" (Law Reform (Personal Injuries) Act 1948 (c.41) s.2(1)); the court was entitled to take into account rights accruing after the period of disablement (*Stott v Sir William Arrol & Co* [1953] 2 Q.B. 92). "Taken into account" meant no more than that the court had to make as accurate a valuation as it could of the rights to be taken into account (*Flowers v George Wimpey & Co* [1956] 1 Q.B. 73).

TAKE ON. "Taking on work" (Defective Premises Act 1972 (c.35) s.1(1)). A person takes on work, for the purposes of assuming the duty imposed by this Act to do a proper job, at the time it is arranged he should undertake it, or, at the least, at the date of commencement, and not that upon which it was completed (*Alexander v Mercouris* [1979] 1 W.L.R. 1270).

TAKE ON BOARD. An obligation to "take on board" certain goods is more exigent than to "put on board", and connotes that whatever care is required to be taken to ship the goods safely and securely must be taken by the obligor (per Cresswell J., *Cooke v Wilson*, 1 C.B.N.S. 163).

TAKE ON THEMSELVES. See *Re Stamford and Warrington* [1911] 1 Ch. 648, cited RATIONE, explaining and not adopting *dictum* of Cockburn C.J., *Nutter v Accrington*, 4 Q.B.D. 375, cited STREET.

TAKE OR DEMAND. For a sheriff, etc. to “take or demand” more than his fees was punishable under s.29(2)(b) Sheriffs Act 1887 (c.55); he would “take” such excess if he appropriated thereto the moneys already in his hands (per Fry L.J., *Woolford’s Trustee v Levy*, 61 L.J.Q.B. 551); to “demand” extortionately, he had, semble, to demand peremptorily or insistingly—merely asserting his right to such excess, e.g. by claiming it in an account which he offered to submit to taxation, was not making such a “demand” (*Woolford* [1892] 1 Q.B. 772). In that case, Kay J. expressed an opinion obiter that such “demand” only applied if money was extorted beforehand by the officer as a condition of his doing his duty, but that opinion was not approved by the Court of Appeal (per Fry and Lopes L.JJ., *Lee v Dangar* [1892] 2 Q.B. 337).

See EXTORTION.

TAKE OR DESTROY. A penalty for “taking or destroying” the spawn of fish (*Bridger v Richardson*, 2 M. & S. 568), or for “taking or killing” fish (*R. v Mallinson*, 2 Burr. 679), means an improper taking, and not, e.g. removing spawn from one bed to another.

TAKE OR USE. See TAKE.

TAKE OVER. Repair of a road until “taken over” by the local authority: see *Skinner v Hunt* [1904] 2 K.B. 452, cited REPAIR; *Regent’s Canal & Docks Co v Gibbons* [1925] 1 K.B. 81.

“Taken over the establishment” (Industrial Training Levy (Road Transport) Order 1967 (No.1309) art.3(4)). A company who leased an establishment for seven years, with the equipment and use of the trade name, came within the section as it is immaterial whether the take-over is permanent or temporary (*Road Transport Industry Training Board v Brice and Price* (1968) 112 S.J. 801).

TAKE PART. “Taken any part in the proceedings” (Supreme Court Costs Rules 1959 r.22(3), now R.S.C. Ord.62 r.22(3)): A cited party who had not entered an appearance, but was present in court, and orally assented to an amendment to the respondent’s answer, and to dispensing with service of the amended answer on him, had “taken part” in the proceedings within this rule (*Roberts v Roberts* [1965] 1 W.L.R. 643).

“Take part or offer to take part in any arrangements” (Prevention of Fraud (Investments) Act 1958 (c.45) s.13(1)). A person can “take part” for the purposes of this section through other persons acting on his behalf (*Secretary of State for Trade v Markus* [1976] A.C. 35).

“Takes part in” (Representation of the People Act 1969 (c.15) s.9(1)) means “actively participates in” and not “is shown or recorded in” (*Marshall v BBC* [1979] 1 W.L.R. 1071).

“Taking part in a strike” (Employment Protection (Consolidation) Act 1978 (c.44) s.62(1)(b)). Where a workforce is called out on strike, those employees who were on leave at the time, and knew nothing about the strike were not “taking part in a strike” within the meaning of this section. The fact that it was their shop stewards organising the strike did not mean that they had assented or participated (*Dixon v Wilson Walton Engineering* [1979] I.C.R. 438). An employee who intended to go to work but turned back through fear of being abused by pickets mounted by striking workmates was herself “taking part in a strike” within the meaning of this section (*Coates and Another v Modern Methods and Material* [1982] W.L.R. 764). A worker who, while off sick during the entire period of a strike, spoke to the pickets at the gate could thereby be

TAKE

held to have been “taking part” in the strike, even though the employers were unaware of the fact that he had done so (*Hindle Gears Ltd v McGinty* [1985] I.C.R. 111).

“Taking part in a strike” (Employment Protection (Consolidation) Act 1978 (c.44) s.62(1)(b)). An employee who was absent ill when her fellow workers went on strike could not be said to have taken part in the strike unless that was a clear factual finding that had she not been ill she would have supported the industrial action (*Rogers v Chloride Systems* [1992] I.C.R. 198).

TAKE PLACE. The mere supply of liquor to a drunken person was held as not permitting drunkenness “to take place”, within s.13 of the Licensing Act 1872 (c.94) (per Surrey Sessions, *Smith v Eldridge*, 48 J.P. 25); but see *Edmunds v James* [1892] 1 Q.B. 18, cited SUFFER.

TAKE POSSESSION. “Take possession”; “take effect in possession”: see also POSSESSION.

TAKE UP. “Take up money at interest”: see BORROW.

Taking up a RISK: see *Byas v Miller*, 3 Com. Cas. 40.

TAKEN. See TAKE.

TAKEN FROM. “Taken from the ship’s tackle directly on their coming to hand”: see *The Coahoma County* [1904] P. 95, cited TACKLE.

TAKEOVER OFFER. Stat. Def., Companies Act 2006 s.974.

TAKER. See INHERITOR.

TAKING-OFF. (Air Navigation Act 1920 (c.80) s.9(1).) An aircraft turning before taxiing into position for its take-off is not “taking-off” within s.9(1) (*Blankley v Godley* [1951] 1 All E.R. 436).

TAKINGS AT SEA. See TAKE.

TAKE QUALE. See *Wieler v Schilizzi*, 25 L.J.C.P. 89, cited *Jones v Just*, L.R. 3 Q.B. 204, 205. See further *Commissioner of Public Works v Logan* [1903] A.C. 363.

TALES. A “tales” is when the jury empanelled do not appear, or appearing, are challenged, “in this case the judge upon petition granteth a supply to be made by the sheriffe of some men there present equal in reputation to those that were impanelled; and hereupon the very act of supplying is called a *tales de circumstantibus*” (Termes de la Ley).

See also *R. v Solomon* (1958) 42 Cr.App.Rep. 9; CHALLENGE.

TALFOURD’S ACTS. Custody of Infants Act 1839 (c.54); see Custody of Infants Act 1873 (c.12).

Copyright Act 1842 (c.45), which is sometimes called Earl Stanhope’s Act.

TALLAGE. “Taxe, and tallage’ are payments as tenths, fifteenes, subsidies, or such like, granted to the King by Parliament. The tenants in ancient demesne are quite of these taxes and tallages granted by Parliament, except that the King doe taxe ancient demesne, as he may when he thinkes good for some great cause” (Termes de la Ley, Taxe and Tallage; see further Cowel). But this exemption of tenants in ancient demesne does not extend to local taxation levied by authority of Parliament, e.g. county rate, poor rate, etc. for such taxation is not granted by Parliament to the Crown but is for the benefit of the particular locality (*R. v Aylesford*, 29 L.J.M.C. 83).

TALWOOD. “Talwood’ is a term used in the Assize of Wood and Coals 1542 (c.3), and Assizes of Fuel 1552 (c.7) and of 1601 (c.14), and it signifies such wood as is cut into short billets, for the sizing whereof those statutes were made” (Termes de la Ley).

TAMDIU. See QUAMDIU.

TANK. Settled Land Act 1925 (c.18) Sch.III Pt 1 (xiv): see *Re Harrington*, 75 L.J. Ch. 460, cited RESERVOIR; *Re Dunraven's Settled Estates* [1907] 2 Ch. 417.

"Tank" (Plant and Machinery (Valuation for Rating) Order 1927 (No.480) Sch. Class 4). An underground metal container resting on concrete cradles, surrounded by brick walls and with sand filling the space between the container and the walls, was a "tank" housed with a structure and was not part of a tank formed by the whole installation (*Shell-Mex and BP v Holyoak* [1959] 1 W.L.R. 188).

TAPERING. "'Tapering' means gradually converging to a point" (per Ellenborough C.J., *R. v Metcalf*, 2 Starkie, 250); therefore, it was held in that case that, if a patent is for a "tapering" brush and the specification shows that the bristles of the brush would be of unequal length not converging to a point, the patent is bad.

TARGETED GREENHOUSE GAS. Stat. Def., Climate Change Act 2008 s.24.

TARRY. See ELOPE.

TARTAN. Stat. Def., "a tartan is a design which is capable of being woven consisting of two or more alternating coloured stripes which combine vertically and horizontally to form a repeated chequered pattern" (Scottish Register of Tartans Act 2008 (asp 7) s.2).

TASTE. See VERTU.

TAUT. See TIGHT.

TAVERN. See ALEHOUSE; HOTEL; PUBLIC HOUSE.

TAVERN KEEPER. See *Lorden v Brooke Hitching* [1927] 2 K.B. 237.

TAX. "The tax which he ought to be charged under this Act" (Income Tax Act 1952 (c.10) s.25(3)(a)) meant the whole tax chargeable for the relevant year (*IRC v Hinchy* [1960] A.C. 748).

To "tax" a solicitor's bill of costs is to deal seriatim with each item by way of allowance or disallowance; to "settle" it is finally to ascertain the amount recoverable (per Farwell J., *Re Grant* [1906] 1 Ch. 124, cited BILL). See also TAXATION.

A director's account which was substantially overdrawn to enable the taxpayer company to make loans to participators in a close company was "tax" for the purposes of the Taxes Management Act 1970 (c.9) s.109 (*Joint (Inspector of Taxes) v Bracken Developments* (1994) T.C. Leaflet No.3389).

Stat. Def., Capital Allowances Act 1968 (c.3) ss.87, 94; Taxes Management Act 1970 (c.9) s.118; Income and Corporation Taxes Act 1970 (c.10) s.526(3); Finance Act 1971 (c.68) s.50; Finance Act 1972 (c.41) s.82(9); Finance Act 1976 (c.40) ss.57, 88, 122; Finance Act 1980 (c.48) Sch.18 para.23.

Stat. Def., including levy and duty, para.9(8) of Sch.8 to the Finance Act 2001 (c.9).

Stat. Def., Corporation Tax Act 2010 s.1119.

See TALLAGE; TAXES. Cp. IMPOST.

TAX ADVANTAGE. Where loans had been made by a company to its shareholders the shareholders had "obtained a tax advantage" within the meaning of the Income and Corporation Taxes Act 1970 (c.10) s.460 (see now Income and Corporation Taxes Act 1988 (c.1) s.703) in that they had received consideration in the non-taxable form of loans when they might have received it in the taxable form of capital dividends (*Bird v Inland Revenue Commissioners* [1988] 2 W.L.R. 1237). No "tax advantage", within the meaning of this section, was obtained by a scheme to benefit a charity with a family company's dividend payments (*Sheppard v IRC*; *IRC v Sheppard* [1993] S.T.C. 240).

Stat. Def., Income and Corporation Taxes Act 1988 (c.1) s.709.

TAX

Stat. Def., Finance (No.2) Act 2005 s.30(2).

Stat. Def., Finance Act 2013 s.208.

Stat. Def., Revenue Scotland and Tax Powers Act 2014 s.65

TAX ARRANGEMENTS. Stat. Def., Finance Act 2013 s.207.

TAX AVOIDANCE. (Income and Corporation Taxes Act 1988 (c.1) s.741.) For the purposes of s.741, tax avoidance was a course of action designed to conflict with or defeat the clear intention of Parliament and not, the acceptance of an offer of freedom from tax which Parliament had deliberately made (*IRC v Willoughby* [1997] 4 All E.R. 65).

“Artificial tax avoidance arrangement”. Stat. Def., Revenue Scotland and Tax Powers Act 2014 s.64.

TAX AVOIDANCE SCHEME. Stat. Def., “A scheme or arrangement the main purpose, or one of the main purposes, of which is the obtaining of a tax advantage by the taxpayer” (Capital Allowances Act 2001 (c.2) s.570A(3) inserted by Finance Act 2003 (c.14) s.164).

See UK TAX AVOIDANCE SCHEME.

TAX CREDIT. (Double Taxation Relief (Taxes on Income) (United States of America) Order 1980 (SI 1980/568) art.10(2)(a).) The term “tax credit” in this article has to be read as a “tax credit” under section 86 of the Finance Act 1972 (c.41) (*Union Texas International Corp v Critchley* [1988] S.T.C. 691).

Stat. Def., Corporation Tax Act 2010 s.1119.

TAX EVASION. (Value Added Tax Act 1983 (c.55) s.39(1).) For the purposes of s.39(1) it was unnecessary to prove an intention to make permanent default (*R. v Dealy* [1995] 1 W.L.R. 658).

TAX-NEUTRAL. Stat. Def., Corporation Tax Act 2009 s.776.

TAX YEAR. Stat. Def., Income Tax Act 2007 s.4(2); Corporation Tax Act 2009 s.1319; Corporation Tax Act 2010 s.1119.

TAXABLE. Actual value of a railway “taxable”: see *St. John v Central Vermont Railway*, 14 App. Cas. 590, cited VALUE.

For two recent decisions of the European Court of Justice on the meaning of “taxable amount” in the context of European legislation about VAT and turnover taxes, see *Customs and Excise Commissioners v Primback Ltd* (Case C-34/99) [2001] 1 W.L.R. 1693, ECJ and *Freemans Pic v Customs and Excise Commissioners* (Case C-86/99) [2001] 1 W.L.R. 1713, ECJ.

TAXABLE PERSON. Sixth Directive No.77/388/EEC of the Council of May 17, 1977, art.17: see EXPLOITATION.

TAXABLE SUPPLY. “Taxable supply” (Finance Act 1972 (c.41) s.2(2)). Reimbursement of a solicitor’s out-of-pocket expenditure was part of the consideration which the client paid for the services supplied to him, and was therefore a “taxable supply” which must be brought into account for the purpose of determining the VAT chargeable (*Rowe & Maw v Customs and Excise Commissioners* [1975] 1 W.L.R. 1291). The presentation of such articles as gold watches, clocks, canteens of cutlery, etc. to employees who completed twenty-five years’ service was a “taxable supply” chargeable to value added tax (*RHM Bakeries (Northern) v Commissioners of Customs and Excise* [1978] T.R. 261). The supply by the appellants of books, meters and sundry merchandise to persons taking courses provided by them was a “taxable supply” for VAT purposes (*Church of Scientology of California v Commissioners of Customs and Excise* [1979] T.R. 59). The sale of stolen motor cycles or cars is a

“taxable supply”, since the supply of goods for VAT purposes does not entail a valid contract; it means agreement by the supplier to supply, and the recipient to take possession, in the sense of control of the goods and the facility for their immediate use (*Customs and Excise Commissioners v Oliver* [1980] 1 All E.R. 353). Goods supplied by a retail mail order company as an inducement to agents were “taxable supplies” within the meaning of ss.2(2), 46(1) of the 1972 Act, and not “gifts of goods” within the meaning of Sch.3 para.6 (*GUS Merchandise Corp v Customs and Excise Commissioners*, *The Times*, July 11, 1981. See also SUPPLY.

Stat. Def., Finance Act 1972 (c.41) s.46(1); Value Added Tax Act 1983 (c.55) s.2(2).

TAXABLE TOTAL PROFITS. Stat. Def., Corporation Tax Act 2010 s.4.

TAXATION. For the meaning of “taxation” in a charterparty, see *City of Halifax v Nova Scotia Car Works Ltd* [1914] A.C. 992.

(a) Taxation of costs as between solicitor and client distinguished from party and party costs: see *Giles v Randall* [1915] 1 K.B. 290; *Re Lavey* [1921] 1 K.B. 344.

(b) “Taxation as between solicitor and client” denotes an inquiry as to the costs which a client ought properly to pay to his own solicitor (*Goodwin v Storrar* [1947] K.B. 457).

The word “taxation” has been held not to include municipal rates (*Orthodox Patriarchate of Jerusalem v Municipal Corp of Jerusalem* [1944] A.C. 1).

Finance Act 1936 (c.34) s.18: did not include death duties (*Macdonald v Inland Revenue Commissioners* [1940] 1 K.B. 802).

See DIRECT TAXATION: LOCAL TAXATION.

TAXED. “Taxed off” (Solicitors Act 1932 (c.37) s.65) meant a reduction of the bill by the Taxing Master where the business involved was within the retainer, not where the client said “This is business with which I have no concern, it ought never to have been in the bill at all” (*Re Taxation of Costs, Re a Solicitor* [1936] 1 K.B. 523, at 532).

See CHARGED; RATED OR ASSESSED.

TAXED CART. See *Williams v Lear*, L.R. 7 Q.B. 285, dissenting from *Purdy v Smith*, 28 L.J.M.C. 150.

TAXED COSTS. An agreement to pay a solicitor’s “taxed costs”, means, prima facie, that the costs must be taxed by one of the Masters of the High Court (*Morgan v West*, 14 L.J. Ex. 3).

“Taxed costs of the petitioner” (Bankruptcy Rules 1886 r.125) included the costs of a re-hearing of the petition and an appeal therefrom (*Re Bright* [1903] 1 K.B. 735).

See COSTS.

TAXED LEASE. Stat. Def., Corporation Tax Act 2009 s.227.

TAXED RECEIPT. Stat. Def., Corporation Tax Act 2009 s.227.

TAXES. “When ‘taxes’ are generally spoken of—if the subject-matter will bear it—they shall be intended parliamentary taxes given to the Crown” (per Holt C.J., *Brewster v Kidgill* 12 Mod. 167; see further *R. v Aylesford* 29 L.T.M.C. 83, cited TALLAGE); and the word will include subsequent taxes of the same nature as those in being at the date of the document to be construed, but not those of a different nature (*Brewster v Kidgill* above; *nom. Brewster v Kitchin* 1 Raym. Ld. 317; see further Woodf. (24th edn) 640 et seq.). See further *Sion College v London* [1901] 1 K.B. 617, and *London v Netherlands Steamboat Co* [1906] A.C. 263, below; *Lindsay v Bett* 35 Sc. L.R. 881; per Palles C.B., *Cork v Cork CC* [1903] 2 Ir. R. 497–501.

TAXI

Income tax, see DEDUCTION; 3 Jarm. (8th edn) 1806 et seq. Such a direction included legacy duty (*Louch v Peters* 3 L.J. Ch. 167, cited OUTGOING). As to exemption from apportionment of estate duty, see *Fitzhardinge v Jenkinson* 80 L.T. 376, cited DEDUCTION.

“Rates, taxes, and deductions”, in respect of a statutory sum in lieu of tithes: see *Chatfield v Ruston* 3 B. & C. 863, cited OUTGOING.

TAXI. Stat. Def., Disability Discrimination Act 1995 (c.50) s.32(5).

See HACKNEY CARRIAGE.

TAXIMETER. Stat. Def., Local Government (Miscellaneous Provisions) Act 1976 (c.57) s.80; Private Hire Vehicles (London) Act 1998 (c.34) s.11(3).

TAYLOR’S ACT. Michael Angelo Taylor’s Act is 57 Geo. 3, c. xxix; see thereon *Gard v Commissioners of Sewers*, 28 Ch. D. 486; *Summers v Holborn* [1893] 1 Q.B. 612; *Wyatt v Gems* [1893] 2 Q.B. 225; *Keep v St. Mary, Newington* [1894] 2 Q.B. 524. *Gard v Commissioners of Sewers*, above, was followed in *Lynch v Commissioners of Sewers* 32 Ch. D. 72, and in *Denman v Westminster* [1906] 1 Ch. 464; see further *Gordon v St. Mary Abbots* [1894] 2 Q.B. 742, and *Gibbon v Paddington* [1900] 2 Ch. 794, both cited PART; *Winsborrow v London Joint Stock Bank*, 88 L.T. 803, cited HANG; *Wild v Woolwich* [1910] 1 Ch. 36, cited TREAT.

See OBSTRUCT.

TEA. “Tea dealer”: see *Fitz v Iles* [1893] 1 Ch. 77, cited COFFEE-HOUSE.

“Tea kettle”: see *Hunt v Berkeley*, Moseley, 47, cited APPURTENANCES.

See GREEN TEA.

TEACHER. “Teacher in further education”: Stat. Def., Teachers’ Pay and Conditions Act 1987 (c.1) s.7. See also SCHOOL.

TEACHING. See COUNSELLING.

TEAME. See THEME.

“Team of land”: see QUADRUGATA TERRÆ.

TEAM-WORK. A lessee’s covenant, in an agricultural lease, to provide “team-work”, extends to other than agricultural work, e.g. hauling coals; but it does not oblige the lessee to find a cart, plough, or other machine, that may be necessary for the performance of the work (*Marlborough v Osborn*, 33 L.J.Q.B. 148).

TEAR; TEARING. A will may be revoked by “tearing” it (Wills Act 1837 (c.26) s.20), a word which includes “cutting”. The “tearing”, or “cutting”, need not be of the whole will; tearing or cutting off its principal part, e.g. either of the necessary signatures (*Hobbs v Knight*, 1 Curt. 768), or even the seal, when it has been executed under seal (*Price v Powell*, 3 H. & N. 341), is sufficient (1 Jarm. (8th edn), 161); but it is doubtful whether tearing in a fit of anger is a revocation, if the testator afterwards puts the pieces together as well as he can (*Re Colberg*, 2 Curt. 832) semble, such a tearing as that referred to in *Re Colberg* is not a revocation (*Re Brassington* [1902] P. 1). See also *Re Mackenzie* [1909] P. 305; *Re Cowling* [1924] P. 113; and if the tearing is only partial and (with the assent of the testator) is arrested before the material part of the will is injured, there is no such tearing as will work revocation (*Doe d. Perkes v Perkes*, 3 B. & Ald. 489). “Cutting out a particular clause, or the name of a legatee, is a revocation *pro tanto* only” (1 Jarm. (8th edn), 162). See hereon *Mills v Millward*, 15 P.D. 20. See also *Gill v Gill* [1909] P. 157, cited DESTROY.

Erasing the signature with a knife is a “tearing” that revokes (*Re Morton*, 12 P.D. 141); but would that be so if the erasure were made with a pen?

A tearing burning or destroying, effective to revoke, must be made by the testator or by his authority (*Re Leigh* [1892] P. 82; *Mills v Millward*, above; *Margary v Robinson*, 12 P.D. 8, cited REVOKE).

See WEAR AND TEAR; DESTROY; CANCEL; BURN.

TECHNICAL. “‘Technical work’ is . . . a phrase of substantially wider import than ‘scientific work’. No doubt all scientific work may be said to be ‘technical’, but the converse by no means necessarily applies” (per Jenkins J., *Battersea BC v British Iron and Steel Research Association* [1949] 1 K.B. 434).

For what amounted to “technical regulations” in the context of Council Directive 83/189 see *Colim NV v Bigg’s Continent Noord NV* (Case C-33/97) [2000] 2 C.M.L.R. 135, ECJ. For the same question in a different context see *Snellers Auto’s BV v Algemeen Directeur van de Dienst Wegverkeer* [2000] 3 C.M.L.R. 1275, ECJ.

TECHNICAL ASSISTANCE. Stat. Def., s.5(2) of the International Development Act 2002 (c.1).

TECHNICAL CONTRIBUTION. See INVENTIVE CONCEPT.

TECHNICALITY. See EQUITY; FORMAL.

TECHNOLOGY. Stat. Def., “means information (including information comprised in software) that is capable of use in connection with: (a) the development, production or use of any goods or software; (b) the development of, or the carrying out of, an industrial or commercial activity or an activity of any other kind whatsoever” (s.2(6) of the Export Control Act 2002 (c.28)).

TEEMING AND LADING. Teeming and lading is the action of “robbing Peter, in the form of the funds held for one client, to pay Paul, in the form of making up misappropriated funds of another client” (*Law Society v Sephton* [2004] EWCA Civ 1627 at [106] per Neuberger L.J.).

TEINDS. “Court of teinds”: United Parishes (Scotland) Act 1876 (c.11) s.2.

See FISH TEINDS.

TELECOMMUNICATIONS. “61. I also agree with Mr Malynicz that the term ‘telecommunications services’ has a broad meaning, which includes services such as digital audio visual streaming via broadband connections or mobile or fixed line telephone networks of audio visual TV content to mobile telephones and other devices, including to set top boxes.” (*Total Ltd v YouView TV Ltd* [2014] EWHC 1963 (Ch).)

TELECOMMUNICATIONS SERVICE. Stat. Def., s.2(l) of the Regulation of Investigatory Powers Act 2000 (c.23).

TELECOMMUNICATION SYSTEM. Stat. Def.; s.2(1) of the Regulation of Investigatory Powers Act 2000 (c.23).

See also PRIVATE TELECOMMUNICATION SYSTEM and PUBLIC; TELECOMMUNICATION SYSTEM.

TELEGRAPH. “Telegraph” (Telegraph Acts 1863 (c.112) s.3 and 1868 (c.73) s.3; Post Office Protection Act 1884 (c.76) s.11) included a telephone (*Att-Gen v Edison Telephone Co*, 6 Q.B.D. 244). “The result of the definition seems to be that, any apparatus for transmitting MESSAGES by electric signals is a telegraph, whether a wire is used or not, and that any apparatus of which a wire used for telegraphic communication is an essential part, is a telegraph, whether the communication is made by electricity or not. It would include, on the one hand, electric signals made, if such a thing were possible, from place to place, through the earth or the air; and, on the other hand, a set of common bells worked by wires pulled by the hand, if they were so

TELEGRAPHIC

arranged as to constitute a code of signals... The various affidavits filed give a complete history of the word 'telegraph', and show that, from the first invention of semaphores till within the last few years, no contrivance of the sort did literally write at a distance, but that the word was applied to a variety of contrivances which, by signals perceptible sometimes by the sense of sight and sometimes by the sense of hearing, conveyed intelligence to great distances in a much shorter time than a letter could be carried" (per Stephen J., delivering the judgment, *Edison*, 6 Q.B.D. 249). See also *Swansea v National Telephone Co*, 74 L.J. Ch. 449; *Postmaster-General v National Telephone Co* [1905] 2 Ch. 172, cited PRIVATE USE. So, lines of "telegraphs", in s.92(10)(a) of the British North America Act 1867 (c.3), included telephones (*Toronto v Bell Telephone Co* [1905] A.C. 52, cited LOCAL WORKS, disapproving *R. v Mohr*, 7 Quebec L.R. 183).

"Telegraphs" includes broadcasting (*Re Radio Communication in Canada* [1932] A.C. 304).

"Telegraph line", in s.8 of the Telegraph Act 1878 (c.76): see *Postmaster-General v Beck and Pollitzer* [1924] 2 K.B. 308.

Stat. Def., British Telecommunications Act 1981 (c.38) s.80.

"Telegraph post": see POST.

See WIRELESS.

TELEGRAPHIC AUTHORITY. When a shipbroker signs a charterparty as agent for a named principal "by telegraphic authority", it is well understood in the trade that he negatives an implication of a warranty of the extent of his authority further than warranting that he has had a telegram which, if correct, authorises such a charter as that which he is signing (*Lilly v Smales* [1892] 1 Q.B. 456).

TELEPHONE. See MESSAGE; TELEGRAPH; TRANSMIT.

TELEPHONE APPARATUS. Stat. Def., Income Tax (Earnings and Pensions) Act 2003 s.319(4), substituted by Finance Act 2006 s.60.

TELEVISED. Stat. Def., "shown (on a screen or by projection onto any surface) whether by means of the broadcast transmission of pictures or otherwise" (Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 s.4).

TELEVISION. An ordinary television set in a long-distance motor coach remained a "television receiving apparatus" within the meaning of reg.143(2) of the Motor Vehicles (Construction and Use) Regulations 1978 (SI 1978/1017) notwithstanding that it was only used for showing video recorded films (*Target Travel (Coaches) v Roberts* [1986] R.T.R. 120).

"Television dealer"; "television set": Stat. Def., Wireless Telegraphy Act 1967 (c.72) s.6(1).

TEMPERANCE. "Temperance hotel": see INN.

TEMPEST. "Damage by tempest": see WEAR AND TEAR.

TEMPESTIVE. See PRECARIO.

TEMPORAL. "'Law temporal'. Which consisteth of three parts, viz.: First, on the common law, expressed in our bookes of law, and judicial records. Secondly, on statutes contained in acts and records of parliament. And thirdly, on customes grounded upon reason, and used time out of minde; and the construction and determination of these doe belong to the judges of the realme" (Co. Litt. 344A). Cp. "law spiritual", under SPIRITUAL.

"Temporal estate" is synonymous with worldly estate. See further *Tanner v Wise*, 3 P. Wms. 295; *Grayson v Atkinson*, 1 Wils. 333, which last case is commented on 2

Jarm. (8th edn), 970. These cases show that a devise of all testator's "temporal estate" or "worldly estate" would, even before s.28 of the Wills Act 1837 (c.26), pass the FEE SIMPLE.

A testamentary gift of "temporal effects", held to include realty (*Re Sheridan*, 17 L.R. Ir. 179).

"Corporation temporal": see CORPORATION.

TEMPORALITY. "Temporalities of bishops, *temporalia episcoporum*, be such revenues lands and tenements, and lay fees, as have been laid to bishops sees by kings and other great personages of this land from time to time, as they are barons and lords of the Parliament" (Cowel).

Bishops Resignation Act 1869 (c.111) s.14: "temporalities' shall include all real and personal property held by any archbishop or bishop, as such, and all fees and emoluments receivable by him by virtue of his office: 'spiritualities' shall include all episcopal and other jurisdiction, of whatever description, exerciseable by an archbishop or bishop".

See SPIRITUALITY.

TEMPORARILY. Works executing for "temporarily" meeting the circumstances created by war damage (War Damage Act 1943 (c.21) s.6(2)). "Temporarily" meant that the works executed were to be superseded by permanent works (*Re St. Luke's Hospital, Chelsea* [1949] Ch. 459).

"Temporarily resident" (the old R.S.C. Ord.65 r.6A); see *Jelic v Co-operative Press* [1947] 2 All E.R. 767. See also TEMPORARY.

"Temporarily used" (Building Regulations 1926 (No.738) reg.15) meant available for use, as well as actually in use (*Field v Perry's (Ealing)* [1950] 2 All E.R. 521).

The test for deciding whether a goods trailer is only "temporarily in Great Britain" within Sch.2 Class 27 of the Goods Vehicles (Plating and Testing) Regulations 1968 (SI 1968/601) is whether its presence is of an occasional nature, and a trailer used regularly to transport goods from Great Britain to the Continent is not "temporarily" in Great Britain (*British Road Services v Wurzel* [1971] 1 W.L.R. 1508).

A student who comes to Great Britain for a course of study of some years' length is not a "person temporarily in Great Britain" for the purposes of art.2(1) of the Motor Vehicles (International Circulation) Order 1975 (SI 1975/1208), even though his stay might be subject to such uncertainties as the availability of a grant (*Flores v Scott* [1984] 1 W.L.R. 690).

"Temporarily employed outside... the British Islands" (Education (Mandatory Awards) Regulations 1983 (SI 1983/1135) reg.5(4)). A man who worked for 13 years in Hong Kong was not "temporarily" employed there for the purposes of these regulations, notwithstanding that he had a house in the United Kingdom and intended to return to it in due course (*R. v Lancashire CC, Ex p. Huddleston* [1986] 2 All E.R. 941).

"Temporarily absent" (Social Security Benefit (Persons Abroad) Regulations 1975 (SI 1975/563) reg.2(1)). The fact that the absence of a person in receipt of benefit from the United Kingdom becomes indefinite does not necessarily mean that he is not "temporarily absent" for the purpose of this regulation (*R. v Social Security Commissioner, Ex p. Akbar* [1992] C.O.D. 245). It would be wrong to construe the word "temporarily" as synonymous with "not permanent" (*Chief Adjudication Officer v Ahmed, The Times*, April 6, 1994).

TEMPORARY. A temporary nuisance gives a reversioner no cause of action: see hereon *Mumford v Oxford, etc. Railway*, 25 L.J. Ex. 265; *Mott v Shoolbred*, L.R. 20 Eq. 22; *Jones v Chappell*, L.R. 20 Eq. 539; *Cooper v Crabtree*, 20 Ch. D. 589.

A person was a temporary resident in the United Kingdom for the purposes of the National Service Act 1948 (c.64) s.34(4), if paying a visit, for social or business reasons, and merely making a short stay. An Irishman working in the United Kingdom was not a temporary resident (*Bickness v Brosnan* [1953] 2 Q.B. 77).

As regards an artificial right— e.g. to an artificial watercourse—claimed by prescription, you “have to consider whether the artificial watercourse had been made for a temporary purpose or not. *Arkwright v Gell* (8 L.J. Ex. 201, cited RIGHT) was a case of water pumped from mines and flowing over another man’s land. That had gone on for over 60 years. ‘Temporary’, therefore, does not mean merely that a thing happens to last in fact for only a few years; but it means that the thing may, within the reasonable contemplation of the parties, come to an end some day; and is not meant to be equivalent to a grant in fee. For example, if a man pump water from his mines, for the purpose of draining them, that is ‘temporary’ in the sense that it is limited by the working of the mines. If a man make through his own land a duct leading water to his millpond for the use of his own mill, that is ‘temporary’, in the sense that it is limited to the period for which he uses the mill. In each case, it is not meant to be a new formation, an alteration of the face of nature, to remain *in perpetuum*, but it is an alteration ‘temporary’, in the sense that it is for the purpose of, and co-extensive with, the carrying on of a particular business” (per Farwell J., *Burrows v Lang* [1901] 2 Ch. 508). See further WATERCOURSE. See further LIGHT; RIGHT; *Schwann v Cotton* [1916] 2 Ch. 459.

“Temporary structure”: see *Westminster Council v London CC* [1902] 1 K.B. 326, cited STRUCTURE. “Temporary building”, under s.27 of the Public Health Amendment Act 1907 (c.53): see *Andrews v Wirral Rural Council* [1916] 1 K.B. 863, cited NEW BUILDING; *Rodwell v Wade*, 23 L.G.R. 174.

“Temporary cessation of work” (Employment Protection (Consolidation) Act 1978 (c.44) Sch.13 para.9(1)(b)). Where the contract of a university lecturer expired on July 31 and was, through lack of funds, not renewed until October, it was held that, as “work” in this paragraph should be construed as being limited to “paid work”, continuity of employment was not broken in August/September and there had only been a “temporary cessation of work” within the meaning of this paragraph (*University of Aston in Birmingham v Malik* [1984] I.C.R. 492). In considering whether the gaps in the employment of applicants for redundancy payments constituted mere “temporary cessations of work”, within the meaning of this paragraph, it was wrong simply to carry out the mathematical exercise of comparing lay-off periods with periods of employment. The correct approach was to look at the entire history of each applicant’s employment and the circumstances surrounding it. Thus an employee who was intermittently absent from work, in an irregular pattern over a period of years prior to dismissal, could be considered only temporarily absent for the purposes of this paragraph, and therefore “continuously employed” for the purposes of s.81(1) (*Flack v Kodak* [1987] 1 W.L.R. 31). Employment which is not pursuant to contracts in the same series is irrelevant in assessing whether an interval constitutes a “temporary cessation” (*Surrey CC v Lewis* [1987] 3 W.L.R. 927). A fuel delivery driver regularly employed for seven months a year over 15 years was held not to have been continuously employed, since the breaks in his employment were more

than a "temporary cessation of work" (*Sillars v Charrington Fuels* [1989] I.C.R. 475). "Temporary cessations" had to be relatively short to fall within para.9(1)(b), and the 29 weeks that fishermen employed for the salmon netting season were laid off each year was not a temporary cessation (*Berwick Salmon Fisheries Co v Rutherford* [1991] I.R.L.R. 203).

See also CONTINUOUSLY.

"Temporary platform" (Building (Safety, Health and Welfare) Regulations 1948 (No.1145) reg.24(5)) refers to a platform erected temporarily for a particular purpose, and does not apply to a fixed structure, part of a building, which is being used as a working place for the time being (*Wescott v Structural and Marine Engineers* [1960] 1 W.L.R. 349).

"Temporary circumstance" (Highways Act 1959 (c.25) s.110). The test as to whether an unlawful obstruction is a "temporary circumstance" within the meaning of this section is whether it is likely to endure or be removed, and it was held that an electricity sub-station, a pine tree and a laurel hedge, on or abutting a path, were "temporary circumstances" in that legal steps could be taken to remove them (*R. v Secretary of State for the Environment, Ex p. Stewart* (1979) 39 P. & C.R. 534).

"The judge noted that the words of the relevant covenant were far from clear, but that the parties agreed that some animal usage was permissible, but only if it was 'temporary'.... The meaning to be given to the word 'temporary' is the meaning that the word has in the context of the Conveyance. It plainly does not have a single legal meaning in all legal contexts: each party on the appeal recognised that the other's reading of the word was one which the word could bear. I consider that the judge correctly recognised that the word was an ordinary English word containing within it a variety of nuances (some of which would be more prominent than others when the word came to be applied to different sets of facts). I consider that he correctly held that whether a particular use (or combination of uses) was 'temporary' was a question of fact and degree: and I would not disturb the application by an experienced County Court Judge of the working document he construed to the facts he found." (*Giles v Tarry* [2012] EWCA Civ 837.)

Cp. PERMANENT; TERMINATING.

TENANCY. "Comprised in a contract of tenancy" (Agricultural Holdings Act 1948 (c.63) s.1(1)) are apt to cover the whole of what is demised (*Howkins v Jardine* [1951] 1 K.B. 614).

The expression "tenancy from year to year" in s.2(1) of the Agricultural Holdings Act 1948 (c.63) means a tenancy which creates an interest which has the invariable characteristics common to all tenancies from year to year at common law (*Gladstone v Bower* [1960] 2 Q.B. 384).

"Tenancy or successive tenancies" (Landlord and Tenant Act 1954 (c.56) s.30(2)) refers to the interest of the tenant and does not include the interest of the landlord (*Artemion v Procopion* [1966] 1 Q.B. 878).

"Tenancy" (Landlord and Tenant Act 1954 (c.56) s.69(1)) does not cover a tenancy at will arising by implication of law (*Wheeler v Mercer* [1957] A.C. 416).

"Tenancy" unqualified by any adjective, where it appears in s.20 of the Rent Act 1965 (c.49) or elsewhere in that Act, means a contractual as opposed to a statutory tenancy (*Brown v Conway* [1968] 1 Q.B. 222).

"Subject to the tenancy" (Leasehold Reform Act 1967 (c.88) s.9(1A)(a) as amended by the Housing Acts 1974 (c.44) and 1980 (c.51)). In this section "tenancy" means

existing tenancy. So that where a tenant applying to purchase the freehold of a house under this section had previously obtained an extended lease, the price to be paid was to be calculated subject to the extended lease (*Mosley v Hickman* (1986) 278 E.G. 728).

(Rent Act 1977 (c.42) s.1.) A number of agreements each purporting to grant a mere individual licence did not collectively create a joint “tenancy” for the purposes of this Act (*Stribling v Wickham* [1989] 27 E.G. 81). Where the monetary obligations of two parties to a renting agreement were not joint obligations there was no complete unity of interest and therefore no joint tenancy (*Mikeover v Brady* (1989) 139 New L.J. 1194). A “licence” to occupy premises purportedly without exclusive possession was held to create a tenancy, since in reality the parties had contemplated that exclusive possession would be enjoyed (*Nicolaou v Pitt* [1989] 21 E.G. 71). An arrangement whereby a builder who had carried out works of refurbishment on a property was permitted to take over the property, and use it as he liked until the owner paid for the works, created a “tenancy” in favour of the builder despite the element of uncertainty (*Canadian Imperial Bank of Commerce v Bello* [1991] N.P.C. 123).

The granting of accommodation to an occupier for a limited period by a housing authority in discharging its duties under s.65(3) of the Housing Act 1985 (c.68) did not create a statutory tenancy (*Ogwr BC v Dykes* [1989] 1 W.L.R. 295). But in a case where the housing association was under no such statutory duty, and a homeless person was referred by the council to the housing association, which housed her in temporary accommodation under an agreement promising sole occupancy, a tenancy was created, notwithstanding that the association retained a key for the purposes of offering support and inspecting the state of repair (*Family Housing Association v Jones* [1990] 1 All E.R. 385). The effect of agreeing to purchase a property at one third of its true value and guaranteeing the vendors the right to remain in it for the rest of their lives was to create a tenancy (*Skipton Building Society v Clayton*, *The Times*, March 25, 1993).

“Tenancy” (Housing Act 1985 (c.68) s.79(1)). A homeless person who was provided with temporary accommodation by a housing association was a tenant and not a licensee (*Family Housing Association v Jones* [1989] 22 H.L.R. 45). A licence to occupy a self-contained bedsitting room in a single men’s hostel run by the council was not a tenancy within s.79(1), but was a licence to occupy within s.79(3) (*Westminster City Council v Clarke*, *The Times*, February 13, 1992).

“Tenancy” (Landlord and Tenant Act 1954 (c.56)). An agreement which reserved to the landlady the right to enter the premises for occasional inspections, and under which the tenant paid a sum to have the landlady clean the premises, created a tenancy rather than a licence (*Vandersteen v Agius* (1992) 65 P. & C.R. 266).

Stat. Def., providing, in particular, for equality of meaning of lease and tenancy, s.112(2) of the Commonhold and Leasehold Reform Act 2002 (c.15).

Stat. Def., Housing Act 1985 (c.68) s.621; Landlord and Tenant Act 1985 (c.70) s.36; Landlord and Tenant Act 1987 (c.31) s.59; Landlord and Tenant Act 1988 (c.26) s.5; includes licence (Housing Act 1996 (c.52) s.158(1)).

Tenancy does not include an agreement for a tenancy (but an instrument called an agreement may amount to a lease or tenancy) (*Truro Diocesan Board of Finance v Floey* [2008] EWCA Civ 1162).

“Domestic tenancy”. Stat. Def., Housing (Wales) Act 2014 s.2.

See EGGSHELL TENANCY; FUTURE; JOINT TENANCY; ORDINARY TENANCY; PRESENT; STATUTORY; TENANT IN COMMON; YEAR TO YEAR. See CONTRACT OF TENANCY.

TENANCY IN COMMON. See TENANT IN COMMON.

TENANT. In its feudal acceptation, "tenant" has five significations: it signifies (1) the estate held; (2) the tenure of the land; (3) performance of the obligations; (4) to be bound; and (5) "to deeme or judge" (Co. Litt. 1A, B; see further 2 Bl. Com., Ch.5).

The expression "tenant" does not negative agency (*Danziger v Thompson* [1944] 1 K.B. 654).

(Agricultural Holdings Act 1948 (above) s.24(1).) "Tenant" in s.24(1) does not include sub-tenant (*Sherwood (Baron) v Moody* [1952] 1 T.L.R. 450).

"Tenant with whom the contract of tenancy was made" (Agricultural Holdings Act 1948 (c.63) s.24(2)(g)) means just that, and cannot extend to an assignee even although the assignment was made with the landlord's consent (*Clarke v Hall* [1961] 2 Q.B. 331).

One of two or more joint tenants under a business tenancy is not "the tenant" within the meaning of ss.23(1) and 24(1) of the Landlord and Tenant Act 1954 (c.56) (*Jacobs v Chandhuri* [1968] 2 Q.B. 470).

The words "the tenant's business" in Sch.9 para.5(1) of the Landlord and Tenant Act 1954 (c.56) mean the actual or particular business carried on by the tenant claiming compensation and does not include a similar business previously carried out on the premises by someone else (*Connaught Fur Trimmings v Cramas Properties* [1965] 1 W.L.R. 892).

"Tenants in equal shares per stirpes": see *Re Alexander* [1919] 1 Ch. 371.

"Tenants holding over after the termination of the tenancy" (R.S.C. Ord.113 r.1). These words did not include unlawful sub-tenants found on the premises after the lawful tenant had terminated the tenancy and left, even though they had been in occupation before the termination of the tenancy (*Moore Properties v McKeon* [1977] 1 W.L.R. 1278).

Where a potential purchaser was granted possession of the premises in question for a term at a rent, he was a tenant and not merely a licensee, notwithstanding that neither he nor the owner intended that a tenancy should be created (*Bretherton v Paton* (1986) 278 E.G. 615). An occupier, allowed to occupy a council house for a fixed period in the performance of a statutory duty imposed on the council, and allowed to remain in occupation after the fixed period, was a licensee and not a tenant (*Ogwr BC v Dykes* [1989] 1 W.L.R. 295). Occupants of flats intended to be short-life housing were short-term licensees and not tenants (*Camden LBC v Shortlife Community Housing* [1992] N.P.C. 52).

"The tenant" (Agricultural Holdings (Notices to Quit) Act 1977 (c.12) s.2(1)(b)). In the case of a joint tenancy "the tenant" for the purposes of this section means the joint tenancy and not the joint tenants or any one of them (*Featherstone v Staples* (1986) 278 E.G. 867).

(Agricultural Holdings Act 1948 (c.63) s.24(1).) Where a tenancy and sub-tenancy of agricultural land were created simultaneously, and it was contemplated by all parties that the sub-tenant would farm the land, the sub-tenant became the "tenant" entitled to security of tenure under this section (*Gisbourne v Burton* [1988] 3 W.L.R. 921).

TENANT

Stat. Def., Housing Act 1985 (c.68) s.621; Landlord and Tenant Act 1987 (c.31) s.59; Landlord and Tenant Act 1988 (c.26) s.5; Landlord and Tenant (Covenants) Act 1995 (c.30) s.28(1).

Stat. Def., “in relation to a lease, means the person who has right as tenant under the lease, whether or not such person has completed title (and where more than one person comes within that description, the person who most recently acquired that right)” (Long Leases (Scotland) Act 2012 s.80).

“Tenant whose term has expired”: see EXPIRE.

See DESIRABLE.

TENANT AT WILL. “Tenant at will is where lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession” (Litt. s.68; see hereon Co. Litt. 55A). See hereon *Wright v Tracey*, Ir. Rep. 7 C.L. 134, and *Brew v Conole*, 9 C.L. 151, both cited LESS. Cp. SUFFERANCE.

“Tenant at will” (Real Property Limitation Act 1833 (c.27) s.7) “applies to tenant at will simply, and does not include a tenancy where there is a clog upon the lessor exercising his will” (per Esher M.R., *Warren v Murray* [1894] 2 Q.B. 648), e.g. a right in equity to demand a lease for a term of years. See now Limitation Act 1939 (c.21) s.9. See also *East Stonehouse v Willoughby* [1902] 2 K.B. 318, cited ENTRY. See further “cestui que trust”, under CESTUI.

TENANT BY THE CURTESY. See CURTESY.

TENANT FOR LIFE. A tenant for life is, as the phrase implies, one who is entitled to the benefit of property for the term of his, or some other person’s, life. “Estates for life, expressly created by deed or grant, are where a lease is made of lands or tenements to a man to hold for the term of his own life, or for that of any other person, or for more lives than one; in any of which cases he is stiled tenant for life; only, when he holds the estate by the life of another, he is usually called tenant pur autre vie” (2 Bl. Com. 120, cited by Chitty J., *Blaydes v Selby*, 7 T.L.R. 567)—a definition which is not confined to an estate under a lease, but applies whatever be the document creating the estate. See LIVE AND RESIDE; RENT FREE; RESIDE.

See CAPITAL MONEY; IMPROVEMENT; INCOME; INCUMBRANCE; INTEREST; OCCUPY; POSTPONE.

Stat. Def., Administration of Estates Act 1925 (c.23) s.55; Land Charges Act 1925 (c.22) s.20; Land Registration Act 1925 (c.21) ss.3 and 86; Law of Property Act 1925 (c.20) s.205; Settled Land Act 1925 (c.18) s.117, see also ss.19–29; Finance Act 1968 (c.44) Sch.15 para.13(1).

TENANT FOR YEARS. “If tenements be let to a man for terme of halfe a yeare, or for a quarter of a yeare”, he is a tenant for years (Litt. s.67); but, semble, that was an old ruling under the Writ of Waste (Co. Litt. 54B). Ordinarily, nothing less than a yearly tenancy would satisfy the phrase “tenant for years”, or “tenant for a term of years”. Thus, a yearly tenancy was enough under the Landlord and Tenant Act 1730 (c.28) s.1 (*Lake v Smith*, 1 B. & P.N.R. 174); but not a weekly tenancy (*Lloyd v Rosbee*, 2 Camp. 453), nor a quarterly tenancy (*Wilkinson v Hall*, 3 Bing. N.C. 531).

See YEAR TO YEAR.

TENANT IN COMMON. “Tenants in common are they which have lands or tenements in fee simple, fee taile, or for terme of life, etc. and they have such lands or tenements by severall titles, and not by a joynt title, and none of them know of this his severall, but they ought by the law to occupie these lands or tenements in common,

and *pro indiviso* to take the profits in common. And because they come to such lands or tenements by severall titles, and not by one joynt title, and their occupation and possession shall be by law between them in common, they are called tenants in common" (Litt. s.292).

"A limitation to, or trust for, several, either nominatim or as a class, with any words implying a distinctness of interest, makes them tenants in common: Co. Litt. 188B" (Elph. 284; see further 3 Jarm. (8th edn), Ch.46), e.g. EQUALLY; SHARE AND SHARE ALIKE. They take PER CAPITA.

So, a discretionary power of advancement is incompatible with a joint tenancy, and the beneficiaries take as tenants in common (*L'Estrange v L'Estrange* [1902] 1 Ir. R. 467, cited *Taggart v Taggart*, 1 Sch. & Lef. 88; *Mayn v Mayn*, L.R. 5 Eq. 150); see further *Bennett v Houldsworth*, 55 S.J. 270. See now Law of Property Act 1925 (c.20) ss.34–36.

See JOINT TENANT; PARTNERSHIP; RECEIVING.

TENANT IN TAIL. Tenant in tail "is where a man holdeth certaine lands or tenements to him and to his heires of his body begotten" (*Termes de la Ley, Taile*). See HEIR; HEIRS OF THE BODY; TAIL. See *Hilbers v Parkinson*, 25 Ch. D. 200, and *Re Dunsany* [1906] 1 Ch. 578, both cited SETTLE. See Law of Property Act 1925 (c.20) ss.130–133.

See further Settled Land Act 1925 (c.18) s.117; Law of Property Act 1925 (c.20) s.176.

TENANT OF A DWELLING. In the Landlord and Tenant Act 1985, a reference to the tenant of a dwelling does not require that the tenant be in occupation (*Ruddy v Oakfern Properties Ltd* [2006] EWCA Civ 1389).

TENANT OF A FLAT. A reference to the tenant of a flat naturally includes a reference to a lessee whose lease includes a flat, whether or not it also includes other premises (*Howard de Walden Estates Ltd v Aggio* [2008] UKHL 44).

TENANT-RIGHT. Away-going future crops fell strictly within the meaning of the words "tenant-right yet to come", as contained in a bill of sale (*Petch v Tutin*, 15 L.J. Ex. 280).

TENANT'S FIXTURES. See FIXTURES.

TENANTABLE REPAIR. Under an obligation to keep premises in "tenantable repair", decorative repair is not included; papering, always, and painting, unless needed for the protection of the property, are decorative repairs; nor does the obligation extend to repairing, or restoring, what is worn out by age (*Crawford v Newton*, 36 W.R. 54; *Proudfoot v Hart*, 25 Q.B.D. 42; see further *Wood v Walsh* [1899] Q.B. 1009, and *Stanley v Towgood*, 6 L.J.C.P. 129, both cited REPAIR); but waste, whether voluntary or permissive is a breach of the obligation (*Proudfoot v Hart*, above). "I entirely agree with what was said by Lopes L.J., in the course of the argument, that 'good tenantable repair of a house is such repair as (taking into account the age of the house, the character of the house, and the locality in which the house is situated) a reasonably minded tenant of the class of tenants who would be likely to want such a house might reasonably require in order to make the house fit for his occupation'" (per Esher M.R., *Proudfoot v Hart*, above). See further *Moxon v Townsend*, 2 T.L.R. 717; per Brett L.J., *Truscott v Diamond Rock-boring Co*, 20 Ch. D. 251, cited NECESSARY.

TENANTLIKE

“Good and tenantable repair” within the meaning of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17): see *Morgan v Liverpool Corp* [1927] 2 K.B. 131.

“Proper state of repair”, under s.7 of the Act: see *Woodifield v Bond* [1922] 2 Ch. 40.

Cp. GOOD CONDITION; GOOD REPAIR; PERFECT REPAIR; REPAIR.

TENANTLIKE. The obligation on a weekly tenant is to use the premises in a tenantlike manner (*Warren v Keen* [1954] 1 Q.B. 15).

TEND. “Question tending to show” that an accused person has committed another offence, in s.1(f) of the Criminal Evidence Act 1898 (c.36): see *R. v Ellis* [1910] 2 K.B. 746; cp. *ASK*; *R. v Starkie*, 91 L.J.K.B. 663; *Jenkins v Freit*, 129 L.T. 95.

“Tending to show” means “tending to reveal”. Therefore, if the accused has himself deliberately revealed a previous conviction he may be asked questions about the previous offence (*Jones v DPP* [1962] A.C. 635). See **SHOW**.

As a general rule any admission of a criminal offence of which a witness has not hitherto been convicted must “tend to criminate” him within the rule which excuses a witness from answering such questions (*Triplex Safety Glass Co v Lancegaye Safety Glass* [1939] 2 K.B. 395).

“Tending to criminate” (Foreign Tribunals Evidence Act 1856 (c.113) s.5). The privilege granted by this section of being excused from answering questions which might “tend to criminate” extends only to criminal matters, and, as affiliation proceedings are a “civil matter” within s.1 of the Act, a putative father cannot claim privilege (*S. v E.* [1967] 1 Q.B. 367).

“Tending to induce”: see **INDUCE**.

TEND TO. “49. Sometimes this happens when the law is modernised. Maybe, if the term stood alone in the subsection, ‘likely to’ could be interpreted as modern language synonymous with ‘tend to’ or have a tendency to’. I do not think so, because there is nothing particularly archaic about ‘tend to’.” (*Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB).)

TENDER. “‘To tender (de tender)’, or *tendre*, is a word common both to the English and French, in Latine *offerre*; and in that sense, and with that Latyn word it is alwayes used in the common law” (Co. Litt. 211A). See further **Cowel**.

As to requisites of a tender, see Co. Litt. 207A, 208A; *Blumberg v Life Interests Corp* [1897] 1 Ch. 171; [1898] 1 Ch. 27; **UNDER PROTEST**.

Gold coins to any amount, silver not exceeding 40s., and bronze (or copper) not exceeding 1s., could be used in making a legal tender (Coinage Act 1870 (c.10) s.4). Bank notes, generally speaking, were not valid as a legal tender; but Bank of England notes were, in England, so valid “for all sums above 5, on all occasions on which any tender of money may be legally made, so long as the Bank of England shall continue to pay ON DEMAND their said notes in legal coin”, but no such notes were a legal tender by the Bank of England itself (Bank of England Act 1833 (c.98) s.6).

All the precision of a strict legal tender was not required in “tendering” rates to overseers under s.30 of the Representation of the People Act 1832 (c.45) (per Maule J.); but merely saying “I am prepared to pay them” was not sufficient (*Bishop v Smedley*, 15 L.J.C.P. 73).

“There is a great difference between payment and tender: payment extinguishes the debt; tender does not” (per Barry L.J., *Hogg v Smith*, 32 L.R. Ir. 191); therefore, where

payment was prescribed as a condition precedent— e.g. as a qualification for the franchise that the person “has paid” his rates (Representation of the People Act 1867 (c.102) s.3(4)).

In County Court Rules 1892 Ord.39 B rr.48, 49 and 50, “tender” and “payment into court” were used as convertible terms (*The Vulcan* [1898] P. 222, cited FINAL DECREE).

On a sale by tender, “a tender ought to be something which takes effect of itself and binds the tenderer in any event” (per Rigby L.J., *South Hetton Coal Co v Haswell Co* [1898] 1 Ch. 465); therefore, where an invitation for tenders states that “the highest net money tender” will be accepted, the inviter is not bound to accept an offer of “such a sum as will exceed by (a stated amount) the amount offered” by any other tenderer (*South Hetton Coal* [1898] 1 Ch. 465). See further SUBJECT TO.

Mere acceptance of a tender for work will not conclude a bargain where a formal contract is stipulated for and terms have to be arranged besides the work to be done and the money to be paid (*Bozson v Altrincham*, 67 J.P. 397).

“Making or tendering”: see SATISFACTION.

“Tender his vote”: see VOTE.

See INDICATIVE TENDER.

TENEMENT. “That [the word ‘tenement’ in a lease] is an expression which is sometimes used to mean a house and in particular a dwelling-house. That, however, is not its strictly correct meaning in law, its correct meaning extending, as I understand, to every kind of hereditament, both corporeal and incorporeal” (per Jenkins L.J., *Levermore v Jobey* [1956] 1 W.L.R. 697).

Stat. Def.: Housing Act 1964 (c.56) s.44.

Stat. Def.: Housing Act 1964 (c.56) s.44.

“Other tenements”: see OTHER; PROPERTY OTHER THAN LAND.

“Tenement factory”: Stat. Def., Factories Act 1961 (c.34) s.176(1).

TENENDUM. The tenendum of a deed has the same office as the habendum, and commences with the words “to hold”: see HAVE AND TO HOLD; 2 Bl. Com. 298, 299.

TENETS. While dogmas may properly be described as tenets, the latter word has a much wider range, and includes opinions on religious matters which do not involve the holder of such opinions in the risk of expulsion from his church (*Strickland v Bonnici*, 78 S.J. 820).

TENOR. “Tenor of writs, records, etc. is the substance or purport of them; or a transcript or copy. Tenor of a libel hath been held to be a transcript which it cannot be if it differs from the libel, and *juxta tenorem* imports it; but not *ad effectum*, etc. for that may import an identity in sense but not in words; 2 Salk. 417. In action of debt, brought upon a judgment in an inferior court, if the defendant pleads *nul tiel record*, the tenor of the record only shall be certified; and, by Hale C.J., it may be the same on certioraris: 3 Salk. 296. A return of the tenor of an indictment from London, on a *certiorari* to remove the indictment, is good by the city charter; but in other cases it is usual to certify the record itself: 2 Hawk. P.C., ch.27, ss.26, 76” (Jacob).

In libel the law attaches a technical meaning to the word “tenor”, as signifying either an exact copy, or a statement of the libel verbatim. “‘Tenor’ has so strict and technical a meaning as to make it necessary to recite verbatim” (*R. v May*, 1 Doug. 194); but the expression “manner and form” means nothing more than a substantial recital (*Wright v Clements*, 3 B. & Ald. 503). “There is a distinction to be observed between the legal terms ‘tenor’ and ‘form’, and the setting out of an instrument

'according to the tenor' or 'according to the form'. 'Tenor' has a stricter sense than 'form'. In the former case, an instrument must be set out *in hæc verba*, but where a form is to be pursued the same strictness is not required" (per Crampton J., *Mount-Cashell v O'Neill*, 2 Ir. Com. Law Rep. 454). In the same strict way "tenor" is construed in America (*Commonwealth v Stevens*, 1 Mass. 203; *Commonwealth v Wright*, 1 Cush. 46; *People v Warner*, 5 Wend. 273). But see IN ACCORDANCE WITH THE FORM.

The maker of a promissory note engaged that he would pay it "according to its tenor" (Bills of Exchange Act 1882 (c.61) s.88), i.e. according to its exact import (*Good v Walker*, 61 L.J.Q.B. 736).

An allegation that an acceptance was presented "according to its tenor and effect", imports its due presentation and at its particular place of presentation (*Huffam v Ellis*, 3 Taunt. 415; *Bush v Kinneear*, 6 M. & S. 210).

"According to the tenor of the title deeds", following a description of property devised, semble, does not enlarge the devise and is merely part of the description (*Sturgis v Dunn*, 19 Bea. 135).

Executor "according to the tenor" of a will, is a phrase distinguishing an executor of a will from one thereby appointed, and means a person not nominated as executor, but who is directed by a will to do one or more of the acts which are competent to, and fall within the office of, the executor nominated (*Re Manly*, 31 L.J.P.M. & A. 198; *Re Punchard*, L.R. 2 P. & D. 369; *Re Leven & Melville*, 15 P.D. 22; *Re Wilkinson* [1892] P. 227; see further *Re Way* [1901] P. 345; *Re Cook* [1902] P. 114, cited *DESIRE*; *Re Pryse* [1904] P. 301). On the contrary, see *Re Oliphant*, 30 L.J.P.M. & A. 82; *Re Lowry*, L.R. 3 P. & D. 157; *Smith v Kerrane*, Ir. Rep. 11 Eq. 447. See hereon Wms. Exs. (13th edn), 10 et seq.

TENTERDEN'S (LORD) ACTS. Statute of Frauds Amendment Act 1828 (c.14); see now Mercantile Law Amendment Act 1856 (c.97) s.13.

Prescription Act 1832 (2 & 3 Will. 4, c.71).

Tithe Act 1832 (2 & 3 Will. 4, c.100).

TENTHS. See TITHES. "The tenths, or *decimæ*, were the tenth part of the annual profit of each (ecclesiastical) living" (1 Bla. Com. 284). See further FIRST FRUITS.

TENURE. "The word 'tenure' signifies the relation of tenant to lord" (per Selborne C., *Att-Gen Ontario v Mercer*, 8 App. Cas. 767); "the service whereby lands and tenements be holden" (Co. Litt. 1A).

For an account of the old English tenures, see Littleton's Tenures; Co. Litt. 1-141B; 2 Bl. Com., Ch.5.

By s.1 of 12 Car. 2, c.24, the ancient English tenures were abolished and turned into free and common socage, except frank-almoign and copyhold, and some of the honorary services of grand serjeanty.

The chief tenures of importance were freehold, copyhold, leasehold, borough English and gavelkind. See hereon 2 Bl. Com., Ch.6; Wms. R.P. (25th edn), Pt I, Ch.2. But copyhold, borough English, and gavelkind have been abolished on deaths after 1925. See Administration of Estates Act 1925 (c.23) s.45. Cp. TENANT.

Land or hereditaments of "any", or "whatever" tenure: see HEREDITAMENT; LAND. The cases there cited show that "tenure" has been relied on to include leaseholds for years in a definition which otherwise would have only included realty; but in *Wilson v Hood* (33 L.J. Ex. 204) the word had the converse effect of showing that realty was included in a phrase which at first sight indicated only personalty.

As to “tenure in capite”, see CAPITE.

Ratione tenuræ: see RATIONE.

TERCE. A widow’s third, her *Jus Relictæ*: see LEGITIM.

TERM. The primary signification of “term” is term for years (*Cavanagh v Morrisson*, 1 Fox & Smith, 81).

“It is said by my Lord Coke that the word ‘term’, though it is more properly applied to a term for years, yet may mean an estate for life, and it is plainly in this deed used in that sense; the trustees are to permit Robert Dormer to receive the profits during the term of his life; and the estate to the children is not to commence till the end, or other sooner determination, of the said term, which by referring the relative to the last antecedent, must mean the term of his life; as to the words ‘sooner determination’, inserted after the estate for life, these are insensible and may be rejected; they were probably thrown in, *currente calamo*, or by following a precedent, and if the precedent was before the Reformation, when there was a civil death (as well as a natural) by entering into religion, it might then have a meaning” (per Hardwicke C., *Smith v Packhurst*, 3 Atk. 137). See also *Wrotesley v Adams*, 1 Plowd. 198.

The term of a lease is the period between the date of the lease and the date on which the lease is limited to expire; consequently where a lease is granted as from a past date “the expiration of the first 50 years of the term” within s.84(12) of the Law of Property Act 1925 (c.20), occurs at 50 years from the date of the lease (*Cadogan (Earl) v Guinness* [1936] Ch. 515).

The term of a lease may, for some purposes, end on one day, and for other purposes, on another day (*St. Germain v Willan*, 2 B. & C. 216).

“The word ‘term’, in a covenant in a lease may signify either the time or the estate granted” (Woodf. (24th edn), 213, 214; *Cottee v Richardson*, 7 Ex. 143, 151).

“Term”, in an agreement for a lease, will generally mean the period or space of time agreed for; so that the actual grant of the lease is not a condition precedent to the stipulations relating to the “term” (*Wood v Copper Miners’ Co*, 23 L.J.C.P. 209; *Bowes v Croll*, 27 L.T.O.S. 77; *Martin v Smith*, L.R. 9 Ex. 50).

Rateable hereditament let “for a term not exceeding three months” (Poor Rate Assessment and Collection Act 1869 (c.41) s.1) included a weekly tenancy, although it could continue for a long time, for the phrase “means that the tenant must, by virtue of his holding, have a ‘right’ to the premises for some period not longer than three months” (per Alverstone C.J., *Hammond v Farrow* [1904] 2 K.B. 332). Cp. NOT TO BE.

A power to lease for any term not exceeding a stated number of years authorises a lease for such a term determinable at the option of the lessor or lessee: see *Sheehy v Muskerry*, 1 H.L. Cas. 576, 589; *Edwards v Millbank*, 29 L.J. Ch. 45. So, of a lease by a mortgagor under s.99 of the Law of Property Act 1925 (c.20), see *King v Bird* [1909] 1 K.B. 837.

Where a “term” of periods of time is spoken of, successive time is implied. Therefore, residence for “a term of three years”, to give a pauper settlement under s.34 of the Divided Parishes, etc. Act 1876 (c.61), had to be for three whole consecutive years, without receiving relief or otherwise coming within the proviso to s.1 of the Poor Removal Act 1846 (c.66) (*Dorchester v Weymouth*, 16 Q.B.D. 31; *St. Olave’s v Canterbury* [1897] 1 Q.B. 682, which last case overrules *R. v Hartfield*, 17 Q.B. 746). See PATIENT.

TERM

“Term or number of years certain” (Recovery of Possession by Landlords Act 1820 (c.87) s.1): a tenancy for 99 years determinable on lives was not within this phrase (*Doe d. Pemberton v Roe*, 5 L.J.O.S.K.B. 289), nor was a tenancy from quarter to quarter determinable by a three months’ notice, or on the tenant losing his beer licence (*Doe d. Carter v Roe*, 12 L.J. Ex. 27).

“Term of years certain” (Landlord and Tenant Act 1954 (c.56) s.38(4), Law of Property Act 1969 (c.59) s.5) can, in this context, include a term of less than a year (*Re Land and Premises at Liss, Hants* [1971] Ch. 986).

“Term of the contract” (Moneylenders Act 1927 (c.21) s.6(2)). A separate arrangement as to the mode of payment of a loan is not a “term of the contract” which has to be contained in the memorandum under this section (*Hanyet Securities v Mallett* [1968] 1 W.L.R. 1265).

“Any longer term than he had under the original sub-lease” (Law of Property Act 1925 (c.20) s.146(4)) refers to the term the underlessee would have had but for the forfeiture of his underlease as the result of the forfeiture of the superior lease (*Cadogan v Dimovic* [1984] 2 All E.R. 168).

A rent review clause in an underlease provided that the revised rent, “having regard to the terms of this underlease (other than those relating to rent)”, was to be what could be expected in the open market. It was held that in this context the rent review clause was not a term “relating to rent” (*MFI Properties v BICC Group Pension Trust* [1986] 1 All E.R. 974).

A rent review clause was operable during the contractual term of the lease and could not be relied upon once the term had been determined (*Willison v Cheverell Estates Ltd* [1995] N.P.C. 101).

“Term of years certain” (Leasehold Reform Act 1967 (c.88) s.3(1)): see LONG TENANCY.

“Term of years absolute”: Stat. Def., Administration of Estates Act 1925 (c.23) s.55; Land Registration Act 1925 (c.21) s.3; Law of Property Act 1925 (c.20) s.205; Settled Land Act 1925 (c.18) s.117; Trustee Act 1925 (c.19) s.68; Universities and College Estates Act 1925 (c.24) s.43; Landlord and Tenant Act 1927 (c.36) s.25.

“Term” of the policy: Stat. Def., Income and Corporation Taxes Act 1970 (c.10) s.334(2).

“Estate, term and interest”: see ESTATE AND INTEREST.

“Unexpired term”: see UNEXPIRED.

“Term”: see Law of Property Act 1925 (c.20) s.153.

Covenant not to part with “any part of the term”: see ASSIGN.

“During the term”: see DURING.

See also FIXED TERM.

TERM OF IMPRISONMENT. See SENTENCE.

TERMINAL. “Terminal charges” (Railway and Canal Traffic Act 1888 (c.25) s.55) “includes charges in respect of stations, sidings, wharves, depots, warehouses, cranes, and other similar matters, and of any services rendered thereat”. In the same Act, s.33(3) see *Hamilton v Caledonian Railway*, 43 Sc. L.R. 696. Cp. “services incidental”, under INCIDENTAL; EXTRAORDINARY SERVICES.

“Terminal station”, in respect of the Manchester, Sheffield & Lincolnshire Railway, does not include “a junction between the railway and a SIDING not belonging to the company, or (in respect of merchandise passing to or from such siding) any station with which such siding may be connected”: see hereon *Manchester, Sheffield &*

Lincolnshire Railway v Pidcock, 10 Ry. & Can. Traffic Ca. 150; *Pidcock v Manchester, Sheffield & Lincolnshire Railway*, 9 Ry. & Can. Traffic Ca. 45.

TERMINAL LOSS (TRADE). Stat. Def., Income Tax Act 2007 s.90.

TERMINATE. An agreement for letting whereby the landlord agreed that he would not "raise the rent, nor terminate the tenancy" of the tenant or his wife: held, a demise for the lives of the tenant or his wife (*Mardell v Curtis*, 43 S.J. 587). See further MOLEST; REMAIN.

A notice "terminating a tenancy" on the last day of a current period may fairly be said to mean the same thing as a notice to quit and deliver up possession on the following day, for in both cases the landlord is intimating that the last day of the current period is to be the last day of the tenancy (*Crate v Miller* [1947] K.B. 946).

Tenancy terminated by the operation of a notice (Landlord and Tenant Act 1927 (c.36) s.4(1)): s.4(1) did not apply if the tenancy had terminated by effluxion of time; "terminated" was used deliberately and was not to be construed as "terminable" (*Allied Ironfounders v John Smedley* [1952] 1 All E.R. 1344).

A tenancy is not "terminated" within the meaning of s.24(1) of the Landlord and Tenant Act 1954 (c.56) unless notice to quit has been given in accordance with the terms of the Act (*Orman Bros v Greenbaum* [1954] 1 W.L.R. 1520).

"Termination" (Protection from Eviction Act 1964 (c.97) s.1(1)). The issue of a writ of summons in an action for forfeiture for breach of a covenant to pay rent did not of itself "terminate" the tenancy for the purposes of this section (*Borzak v Ahmed* [1965] 2 Q.B. 320).

Agricultural Holdings Act 1948 (c.63) s.34(2): see *Swinburne v Andrews* [1923] 2 K.B. 483.

The termination of an employment agreement does not necessarily mean that all legal relationships between the parties come to an end, thus the employee may be obliged to assign patent rights to the employer (*British Celanese v Moncrieff* [1948] Ch. 564).

To alter the nature of employment was not necessarily to terminate that employment within the meaning of the Essential Work (General Provisions) (No.2) Order 1942 (No.1594) art.4(1)(a) (*Adrema v Jenkinson* [1945] K.B. 446).

A medical assistant who is notified that his two year appointment will not be renewed when it expires has not had it "terminated" within the meaning of para.190 of the Terms and Conditions of Service of Hospital Staff 1971 (*R. v Secretary of State for Social Services, Ex p. Khan* [1973] 1 W.L.R. 187).

"Termination of the agency" and "termination of the agreement", in an underwriting agency agreement, mean the same thing, i.e. the cessation of all the mutual obligations of either party forthwith (*Gardner Mountain and D'Ambrumenil Ltd v Inland Revenue Commissioners* [1947] 1 All E.R. 650).

"Termination of the war", in a will, was held to mean the termination of the war with Germany, the date of the termination whereof had been determined under the provisions of the Termination of the Present War (Definition) Act 1918 (c.59) s.1, and not the war generally: see *Re Rawson*, 90 L.J. Ch. 304.

As to the meaning of the phrase "termination of the war", in a policy of insurance, see *Kotzias v Tyser* [1920] 2 K.B. 69, where it was held that although the Treaty of Peace was signed June 28, 1919, peace had not been concluded between the Powers on or before June 30, 1919, within the meaning of the policy, because the Powers did not exchange and deposit ratifications of the Treaty until January 1920.

TERMINATION

“‘Terminate’ is an ambiguous word, since it may refer to a termination by a right under the [hire-purchase] agreement or by a condition incorporated in it or by a deliberate breach by one party amounting to a repudiation of the whole contract” (per Lord Radcliffe, *Bridge v Campbell Discount Co* [1962] A.C. 600).

A pregnancy is “terminated by a registered medical practitioner” within the meaning of s.1(1) of the Abortion Act 1967 (c.87) when the treatment prescribed and initiated by that practitioner, who remains in charge of it throughout, is carried out in accordance with his directions by qualified nursing staff entrusted with its execution in accordance with accepted medical practice (*Royal College of Nursing v Department of Health and Social Security* [1981] A.C. 800).

“Termination of risk”: see RISK.

“Traffic arising and terminating on the railway”: see ARISING.

Cp. PERMANENT; TEMPORARY.

TERMINATION. Termination of employment relationship. Imposition of a variation is not a termination for the purpose of art.4(2) of the Acquired Rights Directive 77/187 (*Ralton v Havering College of Further and Higher Education* [2001] 3 C.M.L.R. 57, EAT).

Stat. Def. “in relation to a tenancy, means the cesser of the tenancy by reason of effluxion of time or from any other cause” (Agricultural Tenancies Act 1995 (c.8) s.38(1)).

TERMINUS. The sea may be a sufficient *terminus ad quem* for a highway, although the public has only limited rights over the foreshore (*Williams-Ellis v Cobb* [1935] 1 K.B. 310).

See also RIGHT OF WAY.

TERMS. “Contract which, ‘according to the terms thereof’, ought to be performed within the jurisdiction” (R.S.C. Ord.11 r.1(e); see now Ord.11 r.1(f)(iii)) does not mean that the place of performance is to be stated in terms; it suffices if such place appears from the contract and its circumstances (*Reynolds v Coleman*, 36 Ch. D. 453). See further WITHIN THE JURISDICTION.

(Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17) s.2(3).) Where the terms on which a dwelling-house was held were less favourable to the tenant than the previous terms, the rent should have been increased. “Terms” here meant the legal rights and obligations of parties as determined by the provisions of the contract or by law (*Asher v Seaford Court Estates Ltd* [1950] A.C. 508, 520).

“The other terms of the new tenancy” (Landlord and Tenant Act 1954 (c.56) s.26(3)) include the term as to duration of the tenancy (*Sidney Bolsom Investment Trust v E. Karmios & Co (London)* [1956] 1 Q.B. 529).

A county council licence for a cinematograph “on such terms and conditions and under such restrictions as (subject to regulations of the Secretary of State) the council may determine” (Cinematograph Act 1909 (c.30) s.2(1)) entitled the council to impose the condition that the exhibition should not be opened on Sundays, Good Fridays, or Christmas Day; see *London CC v Bermondsey Bioscope Co*, 80 L.J.K.B. 141; see also *R. v London CC* [1915] 2 K.B. 466; *Mills v London CC* [1925] 1 K.B. 213. “On such terms”, etc.: see JUST.

In an agreement between two railway companies giving running powers to one company over the other’s lines “on terms to be agreed on”, “terms” includes not only the money payment, but the traffic arrangements necessary for regulating the joint

traffic (*Swansea Improvements Co v Swansea & Mumbles Railway*, 3 Ry. & Can. Traffic Cas. 339, 359). See hereon *Taff Vale Railway v Barry Dock & Railway Co*, 7 Ry. & Can. Traffic Cas. 52.

“Terms and conditions” (Liverpool Corporation (General Powers) Act 1930 (c. cxii) s.29) under which licences might be granted did not include money payments (*Liverpool Corp v Maiden (Arthur)* [1938] 4 All E.R. 200).

An option in a lease to purchase the property for £4,000 upon “such terms and conditions as shall be agreed upon” between the parties was construed to refer to terms as to the payment of the sum, but it was too vague to constitute the basis of an enforceable contract (*Re WG Apps & Sons Pty Ltd and Hurley* [1949] V.L.R. 7).

“Terms, conditions or stipulations” (Electricity (Supply) Act 1919 (c.100) s.22(1)) as not including pecuniary terms: see *West Midlands Joint Electricity Authority v Pitt* [1932] 2 K.B. 1.

Mining Industry Act 1926 (c.28) s.13(2): which may be varied by the Commission did not include royalties and rents (*Consett Iron Co v Clavering Trustees* [1935] 2 K.B. 42).

“Terms and conditions” (Industrial Relations Act 1971 (c.72) s.167(1)(a)) relate to contractual terms and conditions (*Cory Lighterage v Transport and General Workers Union* [1973] 2 All E.R. 558).

The expression “terms and conditions of employment” in the Trade Union and Labour Relations Act 1974 (c.52) s.29(1) should be given a very wide meaning so as to include practices understood and applied by common consent although not written into the contract of employment (*BBC v Hearn* [1977] 1 W.L.R. 1004).

“On such terms as to costs . . . as the court . . . thinks fit” (R.S.C. Ord.21 r.3). On an application to withdraw an application for a new tenancy the “terms” within the meaning of this rule were the terms the court could impose on the applicant as a pre-requisite to granting him leave to discontinue, and were not terms which the court could impose on the respondent (*Covell Matthews & Partners v French Wools* (1977) 35 P. & C.R. 107).

“Term of the contract” (Equal Pay Act 1970 (c.41) s.1(2)). “Term” means a distinct provision or part of the contract comparable, from the point of view of benefits conferred, with a similar part or provision of another contract (*Hayward v Cammell Laird Shipbuilders* [1988] 2 All E.R. 257).

“Such terms . . . as the court thinks fit” (Adoption Act 1976 (c.36) s.12(6)). On making an adoption order it was open to the court to grant, as a “term” of the order, an injunction restraining the natural father from communicating with the child or adoptive parents (*Re Adoption Application No.77/88*, *The Times*, June 4, 1990).

“Term of years” (Agricultural Holdings Act 1986 (c.5) s.1(5)). A tenancy of agricultural land for a term of more than 12 and less than 24 months is a letting for a “term of years” within the meaning of this section (*EWP v Moore* [1992] 2 W.L.R. 184).

(Local Government and Housing Act 1989 (c.42) s.109.) The reference to a “term of years absolute” in the 1989 Act applied to equitable and legal interests (*R. v Tower Hamlets LBC, Ex p. Evon Goetz* [1998] 3 C.L. 377).

(Employment Rights Act 1996 (c.18) s.197(1).) The reference to a fixed term included a contract which had been varied by an extension of the term under the same contract (*BBC v Kelly-Phillips* [1998] 2 All E.R. 845).

TERMS

(Restrictive Trade Practices Act 1976 (c.34) s.9(3).) For the purpose of s.9(3) every agreement for the supply of goods, however made, the part which dealt exclusively with the supply of goods should be disregarded and in order to decide whether the Act applied, the remainder only should be taken into account (*MD Foods Plc (formerly Associated Dairies Ltd) v Baines* [1997] 2 W.L.R. 364).

Stat. Def., Landlord and Tenant Act 1954 (c.56) s.69(1); Industrial Relations Act 1971 (c.72) s.167.

See MODERATE TERMS; SAME; USUAL.

“112. A worker is a person who cannot establish that he is an employee. It is common ground that section 43K(1) was enacted primarily to protect agency workers.

113. The conclusion which I have reached above that there was no contract means that there is also no contract for the purposes of section 43K(1)(b). The only question is whether there also needs to be a contract for the purpose of section 43K(1)(a). The EAT held that on the true interpretation of this provision there was no requirement for a contract.

114. Mr Bowers essentially submits that where Parliament refers to contract, it uses the word ‘contract’ and so when it refers to ‘terms’ there need be no contract. Mr Linden submits that this is wrong. The word ‘terms’ is used because there have to be terms imposed. The sub-section is not intended to apply to non-contractual situations: it has likewise been held that measures to combat discrimination to persons in their occupations do not apply to volunteers: *X v Mid-Sussex Citizens Advice Bureau* [2013] 1 All ER 1038.

115. In my judgment this is a short point. It must inevitably follow from the statutory reference to ‘term on which he is or was engaged to do work’ that there must be a contract.” (*Sharpe v Bishop of Worcester* [2015] EWCA Civ 399.)

TERMS. “42. In *Omielan*, Thorpe LJ was careful to use the word ‘territory’ of an order, not ‘terms’ of an order. It may be that a variation of the undertaking would leave unaffected the terms of paragraph 1 of the order, but it would clearly undermine its territory because no such order would have been made without the undertaking in the form in which it was given.” (*Birch v Birch* [2015] EWCA Civ 833.)

TERMS OF THE TENANCY. The reference to the terms of the tenancy in para.6 of Sch.2 to the Agricultural Holdings Act 1986 (c.5) was not a term of art but took its colour from the context, so that an extension of the tenancy to additional land would generally amount to a variation of the terms of the tenancy (*Secretary of State for Defence v Spencer* [2003] 1 W.L.R. 2701, CA).

TERRA. “‘Terra’ was formerly used as the ordinary term of a grant of an extensive territory” (per James, arg., *Beaufort v Swansea*, 3 Ex. 415); “it may embrace, as appears from the authorities cited by Mr James, as much as the word ‘manor’ may” (per Parke B., *ibid.* 425).

“Terra affirmata”: land let to farm (Jacob).

“Terra assisa”: see ASSISUS.

“Terra boscalis”: woody lands (Jacob).

“Terra culta”: land tilled or manured; inculta, uncultivated (Cowel).

“Terra debilis”: weak or barren ground (Jacob).

“Terra dominica”: see DEMESNE.

“Terra excultabilis”: land that may be tilled (Cowel).

“Terra frusca”: land that hath not lately been ploughed (Cowel).

“Terra giliforata”: land held by the payment of a gilliflower (Cowel).

"Terra hydata": land subject to payment of hydage (Jacob).

"Terra inculta": see *Terra culta*, above.

"Terra lucrabilis": land gained from the sea, or enclosed from a waste (Cowel).

"Terra nova": land newly converted from wood to arable (Cowel).

"Terra puturata": forest land held by the tenure of furnishing meat to the keepers of the forest (Cowel).

"Terra Regis": see ANCIENT DEMESNE.

"Terra sabulosa": gravelly or sandy ground (Cowel).

"Terra testamentalis": land deviseable by will (Jacob).

"Terra vestita": land sown with corn (Cowel).

"Terra villanorum": see NEATLAND.

"Terra wainabilis": tillable land (Cowel; Jacob). Cp. PLOW-LAND.

"Terra warennata": land having free warren (Jacob).

See LAND; PORCA TERRÆ; QUADRUGATA TERRÆ; QUARENTENA TERRÆ.

TERRAGE. A customary due "for the necessary unlading of goods before they come up to the common quay" (Hale, *De Portibus Maris*, Ch.6).

TERRE TENANT. "Tenants of the freehold", as distinguished from tenants for years, "always are in law intended within these words *tertenants*" (*Brediman's Case*, 6 Rep. 58 b; cited *Re Herbage Rents Charity* [1896] 2 Ch. 820). "'Terre tenant' is he who has the actual possession of the land, which we otherwise call the occupation" (Cowel: see further 2 Bl. Com. 91); but that is a misconception, for "it appears from a note to *Jeffreson v Morton* (2 Saund. 9, fn.9) that it generally means the owner of the fee simple" (per Crampton J., *Carroll v Cooke*, 1 Jebb & Sy. 41), and includes a mortgagee in fee simple, although he has never been in possession, and such mortgagee's liability to the rentcharge that may be on the land: see *Cundiff v Fitzsimmons* [1911] 1 K.B. 513.

TERRESTRES. See FOWL.

TERRIER. "'Terrar', *terrarium vel catalogus terrarum*, is a book or roll, wherein the several lands either of a single person, or of a town, are described, containing the quantity of acres, boundaries, tenants names, and such like (18 Eliz., c.17)" (Cowel). See *R. v Hall*, L.R. 1 Q.B. 632, cited COMMUNICANT, as to the admissibility in evidence of an ancient terrier.

See INVENTORY.

TERRITORIAL WATERS. See hereon *R. v Keyn*, 12 Ex. D. 63, cited SEA COAST, on which see *Carr v Francis* [1902] A.C. 181, also cited SEA COAST; ENGLAND; REALM. Cp. WATERS. A collision in the Bristol Channel was held not to have occurred within territorial waters (*The Fagernes* [1927] P. 311).

This expression in ss.1 and 6 of the Wireless Telegraphy Act 1949 (c.54) means territorial waters from time to time, their determination being governed by declarations of sovereignty from time to time by the Crown, or waters recognised as territorial by international usage from time to time insofar as such usage was recognised in this country (*R. v Kent Justices, Ex p. Lye* [1967] 2 Q.B. 153; *Post Office v Estuary Radio* [1968] 2 Q.B. 740).

Stat. Def., Territorial Waters Jurisdiction Act 1878 (c.73) s.7.

TERRITORY. "Territory" (Order in Council of September 30, 1873, arts 1, 2) is used in the treaty between this country and Norway and Sweden as equivalent to "jurisdiction", and covers a ship when it is in the territorial waters of a third power (*R. v Brixton Prison Governor, ex. p. Minervini* [1959] 1 Q.B. 155).

TERROR

“Territory” (Israel (Extradition) Order 1960 (SI 1960/1660) art.1) means any area over which a contracting party exercises effective jurisdiction, and is not necessarily restricted to areas of de jure sovereignty (*R. v Governor of Brixton Prison, Ex p. Schtraks* [1964] A.C. 556).

“The national territory of the Member States within the meaning of Article 299 EC thus also consists of the territorial sea, its bed and subsoil, it being understood that it is for each Member State to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles in accordance with Article 3 of the Convention on the Law of the Sea. . . . However, the sovereignty of the coastal State over the exclusive economic zone and the continental shelf is merely functional and, as such, is limited to the right to exercise the activities of exploration and exploitation laid down in Articles 56 and 77 of the Convention on the Law of the Sea.” (*Aktiebolaget NN v Skatteverket* (Case C-111/05) ECJ.)

“42.In *Omielan*, Thorpe LJ was careful to use the word ‘territory’ of an order, not ‘terms’ of an order. It may be that a variation of the undertaking would leave unaffected the terms of paragraph 1 of the order, but it would clearly undermine its territory because no such order would have been made without the undertaking in the form in which it was given.” (*Birch v Birch* [2015] EWCA Civ 833.)

TERROR. See DURESS.

TERRORISM. (Offences against the Person Act 1864 (c.268) s.2(1)(f), as substituted by the Offences against the Person (Amendment) Act 1992 (No.14 of 1992) s.2).

A murder committed with the sole intention of killing the victim and where there was a consequential frightening of occasional bystanders was not a murder committed “in the course of furtherance of an act of terrorism” (*Lamey v R.* [1996] 1 W.L.R. 902).

Stat. Def., Prevention of Terrorism (Temporary Provisions) Act 1984 (c.8) s.14; Northern Ireland (Emergency Provisions) Act 1996 (c.22) s.58.

Stat. Def., s. 1 of the Terrorism Act 2000 (c.11).

For discussion of the definition of terrorism in the Terrorism Act 2000 see P.L. [2002] pp.210–220.

“What is striking about the language of section1 [of the Terrorism Act 2000—defining terrorism], read as a whole, is its breadth. It does not specify that the ambit of its protection is limited to countries abroad with governments of any particular type or possessed of what we, with our fortunate traditions, would regard as the desirable characteristics of representative government. There is no list or schedule or statutory instrument which identifies the countries whose governments are included within s1(4)(d) or excluded from the application of the Act. Finally, the legislation does not exempt, nor make an exception, nor create a defence for, nor exculpate what some would describe as terrorism in a just cause. Such a concept is foreign to the Act. Terrorism is terrorism, whatever the motives of the perpetrators.” (*R. v F.* [2007] EWCA Crim 243 at [27].)

See *The Legal Definition of ‘Terrorism’ in United Kingdom Law and Beyond*, [2007] Public Law, Summer 2007, pp. 331–352.

“The essence of terrorism is the commission, organisation, incitement or threat of serious acts of violence against persons or property for the purpose of intimidating a population or compelling a government or international organisation to act or not to act in a particular way (see, for example, the definition in article 2 of the draft comprehensive Convention), as Sedley L.J. put it in the Court of Appeal, ‘the use for

political ends of fear induced by violence' (para.31). It is, it seems to us, very likely that inducing terror in the civilian population or putting such extreme pressures upon a government will also have the international repercussions referred to by the UNHCR." (*Al-Sirri v Secretary of State for the Home Department* [2012] UKSC 54.)

"The appeal raises the issue of the meaning of 'terrorism' in section 1 of the Terrorism Act 2000 ('the 2000 Act'). . . .

23. The case for the prosecution is that the definition of terrorism in section 1 of the 2000 Act, and, in particular, in subsections (1) and (2), is very wide indeed, and that it would be wrong for any court to cut it down by implying some sort of restriction into the wide words used by the legislature. On that basis, the appellant was rightly convicted and the answer to the certified question must be 'yes'.

24. The case for the appellant, as it developed in oral argument, had three strands. The first is that the 2000 Act, like the 2006 Act, was intended, at least in part, to give effect to the UK's international treaty obligations, and the concept of terrorism in international law does not extend to military attacks by a non-state armed group against state, or inter-governmental organisation, armed forces in the context of a non-international armed conflict, and that this limitation should be implied into the definition in section 1 of the 2000 Act. The second, and closely connected, argument is that it would be wrong to read the 2000 or 2006 Acts as criminalising in this country an act abroad, unless that act would be regarded as criminal by international law norms. The third argument raised by the appellant is that, as a matter of domestic law and quite apart from international law considerations, some qualifications must be read into the very wide words of section 1 of the 2000 Act.

25. Although it was advanced as an alternative argument to the contentions based on international law, we propose to start by addressing the appellant's case based on the relevant statutory provisions by reference to the familiar domestic principles, and then to consider whether that meaning conflicts with international law. . . .

27. The effect of section 1(1) of the 2000 Act is to identify terrorism as consisting of three components. The first is the 'use or threat of action', inside or outside the UK, where that action consists of, inter alia, 'serious violence', 'serious damage to property', or creating a serious risk to public safety or health—section 1(1)(a), (2) and (4). The second component is that the use or threat must be 'designed to influence the government [of the UK or any other country] or an [IGO] or to intimidate the public'—section 1(1)(b) and (4). The third component is that the use or threat is 'made for the purpose of advancing a political, religious, racial or ideological cause'—section 1(1)(c).

28. As a matter of ordinary language, the definition would seem to cover any violence or damage to property if it is carried out with a view to influencing a government or IGO in order to advance a very wide range of causes. Thus, it would appear to extend to military or quasi-military activity aimed at bringing down a foreign government, even where that activity is approved (officially or unofficially) by the UK government.

29. It is neither necessary nor appropriate to express any concluded view whether the definition of 'terrorism' goes that far, although it is not entirely easy to see why, at least in the absence of international law considerations, it does not. For present purposes it is enough to proceed on the basis that, subject to these considerations, the definition of terrorism in section 1 in the 2000 Act is, at least if read in its natural sense, very far reaching indeed. Thus, on occasions, activities which might command

a measure of public understanding, if not support, may fall within it: for example, activities by the victims of oppression abroad, which might command a measure of public understanding, and even support in this country, may well fall within it.

30. The Crown argues that, particularly given the purpose of the 2000 Act, 'terrorism' cannot be narrowly defined, if one is to allow for the many disparate forms which terrorism may take, and the inevitable changes which will occur in international relations, in political regimes in other countries, and in the UK's foreign policy. Accordingly, runs the argument, a very wide definition was deliberately adopted, but, recognising the risks of criminalising activities which should not be prosecuted, the 2000 Act has, through section 117, precluded any prosecution without the consent of the Director of Public Prosecutions ('DPP') or, if the activities under consideration occurred abroad, the Attorney General.

31. It is clear that it is very hard to define 'terrorism'. Thus, Lord Lloyd of Berwick, who wrote an Inquiry into the Legislation against Terrorism (Cm 3420) which contained recommendations which were reflected in the 2000 Act, observed in a speech on the second reading of the Bill which later became that Act that 'there are great difficulties in finding a satisfactory definition of "terrorism", and suspected that "none of us will succeed"'. That view has been cited with agreement in reports produced by the two successive Independent Reviewers of the legislation appointed under section 36 of the 2006 Act, Lord Carlile of Berriew QC and Mr David Anderson QC.

32. In reports produced in 2006 and 2007 Lord Carlile concluded that the statutory definition of terrorism was 'practical and effective' and advised that, save for small amendments, the definition should remain as originally drafted. More specifically, he observed that 'the current definition in the Terrorism Act 2000 is consistent with international comparators and treaties, and is useful and broadly fit for purpose . . .'. Lord Carlile also stated that 'the discretion vested in the authorities to use or not to use the special laws is a real and significant element of protection against abuse of rights' . . . Despite the undesirable consequences of the combination of the very wide definition of 'terrorism' and the provisions of section 117, it is difficult to see how the natural, very wide, meaning of the definition can properly be cut down by this Court. For the reasons given by Lord Lloyd, Lord Carlile and Mr Anderson, the definition of 'terrorism' was indeed intended to be very wide. Unless it is established that the natural meaning of the legislation conflicts with the European Convention on Human Rights (which is not suggested) or any other international obligation of the United Kingdom (which we consider in the next section of this judgment), our function is to interpret the meaning of the definition in its statutory, legal and practical context. We agree with the wide interpretation favoured by the prosecution: it accords with the natural meaning of the words used in section 1(1)(b) of the 2000 Act, and, while it gives the words a concerningly wide meaning, there are good reasons for it. . . .

39. We are reinforced in this view by the further consideration that the wide definition of terrorism was not ignored by Parliament when the 2000 Act was being debated. It was discussed by the Home Secretary who also, in answer to a question, mentioned the filter of section 117 (see *Hansard* (HC Deb) 14 December 1999, cols 159, 163). This is not a case in which it is appropriate to refer to what was said in Parliament as an aid to statutory interpretation, but it provides some comfort for the Crown's argument. Of rather more legitimate relevance is the fact that Parliament was content to leave the definition of 'terrorism' effectively unchanged, when considering

amendments or extensions to the 2000 Act, well after the 2007 report of Lord Carlile, which so clearly (and approvingly) drew attention to the width of the definition of terrorism—see eg the Crime and Security Act 2010, the Terrorist Asset-Freezing etc Act 2010 and the Terrorism Prevention and Investigation Measures Act 2011....

62. While acknowledging that the issue is ultimately one for Parliament, we should record our view that the concerns and suggestions about the width of the statutory definition of terrorism which Mr Anderson has identified in his two reports merit serious consideration. Any legislative narrowing of the definition of ‘terrorism’, with its concomitant reduction in the need for the exercise of discretion under section 117 of the 2000 Act, is to be welcomed, provided that it is consistent with the public protection to which the legislation is directed.” (*Gul, R. v* [2013] UKSC 64.)

See ACT OF TERRORISM.

“5. ‘Terrorism’ is defined for the purposes of the Act in section 1. Shorn of inessential detail it means the use or threat of action which meets all of three conditions: (1) it must be done for the purpose of advancing a political, religious, racial or ideological cause, (2) it must be designed to influence the government or an international governmental organisation or to intimidate the public and (3) it must involve serious violence to a person or to property, danger to life or serious risk to public health or the risk of serious interference with an electronic system. ‘Acts of terrorism’ are therefore to be construed as acts or omissions having these characteristics.” (*Beghal v Director of Public Prosecutions* [2015] UKSC 49.)

See GOVERNMENT; CONCERNED IN TERRORISM.

TERRORIST. Stat. Def., s.40 of the Terrorism Act 2000 (c.11).

See INTERNATIONAL TERRORIST GROUP and SUSPECTED INTERNATIONAL TERRORIST.

TERRORIST INVESTIGATION. Stat. Def., s.32 of the Terrorism Act 2000 (c.11).

TERRORIST PROPERTY. Stat. Def., s.14 of the Terrorism Act 2000 (c.11).

TEST. “Test action”: see *Amos v Chadwick*, 9 Ch. D. 459; *Bennett v Bury*, 5 C.P.D. 339; *Healey v A. Waddington & Sons* [1954] 1 W.L.R. 688.

“Test ballot”: see *Britt v Robinson*, L.R. 5 C.P. 503, cited PROCEDURE.

Stat. Def., Road Traffic Act 1972 (c.20) s.53(5).

“Test of competence to drive”: Stat. Def., Road Traffic Act 1960 (c.16) s.115.

“Testing equipment”: Stat. Def., Weights and Measures Act 1963 (c.31) s.58(1).

TEST CERTIFICATE. “Any test certificate” (Road Traffic Act 1972 (c.20) s.169(2)(b)). A forged test certificate is a “test certificate” for the purposes of the offence of using a test certificate with intent to deceive contrary to this section (*R. v Pilditch* [1981] R.T.R. 303).

TESTAMENT. “A testament is the true declaration of our last will, of that we would to be done after our death” (Termes de la Ley). See further *Lemage v Goodban*, L.R. 1 P. & D. 62, applied in *Townsend v Moore* [1905] P. 66; per Davey L.J., *Re Elcom* [1894] 1 Ch. 303.

Littleton (s.167) uses “testament” as applicable to a devise of lands and tenements; but Coke’s commentary thereon is, “but in law most commonly, *ultima voluntas in scriptis* is used, where lands or tenements are devised, and *testamentum*, when it concerneth chattels” (Co. Litt. 111A). See further Wms. Exs. (12th edn), 4; DEVISE.

“Testament” includes a will, codicils, etc.; “instrument” signifies the will alone (*Fuller v Hooper*, 2 Ves. sen. 242). See INSTRUMENT; PART; WILL; WRITING.

TESTAMENTARY

A testamentary gift to an individual or a class, in like manner as he or they are entitled under the “will” of A; there “will” means the whole testamentary instruments including codicils (*Pigott v Wilder*, 26 Bea. 92).

A deed of gift executed as a will and proved by extrinsic evidence to be intended to operate after the death of the grantor, is entitled to probate as a will (*Re Slinn*, 15 P.D. 156). See further *Milnes v Foden*, 15 P.D. 105.

As to when a will is to be construed as “conditional”, i.e. to take effect on the happening or not happening of a certain event, see *Re Spratt* [1897] P. 28, in which case Jeune P., reviewed the previous cases (*Halford v Halford* [1897] P. 36).

Stat. Def., New Parishes Act 1844 (c.94) s.7.

TESTAMENTARY CAPACITY. See UNSOUND MIND; UNDUE INFLUENCE.

TESTAMENTARY DISPOSITION. The nomination by a member of a company pension scheme of a beneficiary to receive the death benefit payable under the scheme on the member's death before retirement was not a testamentary disposition by the member, and so the nomination was valid despite non-compliance with the statutory requirements for such dispositions (*Baird v Baird* [1990] 2 W.L.R. 1412).

TESTAMENTARY DOCUMENT. See *Re Peverett* [1902] P. 205; *Re Barrance* [1910] 2 Ch. 419.

As to the incorporation of documents with, and by, a will, see RATIFY; *Re Smart* [1902] P. 238, and *Eyre v Eyre* [1903] P. 131, both cited RATIFY.

See TESTAMENTARY INSTRUMENT.

TESTAMENTARY ESTATE. This phrase in a gift of “personal and testamentary estate” carries the realty, as otherwise it would be inoperative (*Smith v Coffin*, 2 Bl. H. 444; *Roe d. Penwarden v Gilbert*, 3 Brod. & B. 85; *Doe d. Evans v Walker*, 15 Q.B. 28; 2 Jarm. (8th edn), 971). In this last case, Campbell C.J. said, “I think the words ‘my testamentary estate’ mean to include all that I can dispose of. They are prima facie sufficiently large to carry both the realty and personalty”.

See ESTATE.

TESTAMENTARY EXPENSES. “Testamentary expenses” are those which are incident to the proper performance of the duty of an executor (*Sharp v Lush*, 10 Ch. D. 468; see hereon *Brougham v Poulett*, 19 Bea. 134; *Re Young*, 44 L.T. 499), including the probate duty (*Davies v Fowler*, L.R. 16 Eq. 308), and (possibly) estate duty when it is the substitute for probate duty, i.e. so far as personal estate is concerned (*Re Clemow* [1900] 2 Ch. 182; *Re Treasure* [1900] 2 Ch. 648; *Re Fearnside* [1903] 1 Ch. 250; *Re Trenchard* [1905] 1 Ch. 82, cited ANNUITY; and per Parker J., *Re Hadley*, 77 L.J. Ch. 667, and see this last case on appeal [1909] 1 Ch. 20, cited AS SUCH); *secus*, of estate duty in respect of real estate (*Re Palmer* [1900] W.N. 9; *Re Sharman* [1901] 2 Ch. 280; but see *Re Pullen* [1910] 1 Ch. 564, cited MARSHALL); nor is estate duty, even as regards personalty, included in “testamentary expenses”, where the executors are not the parties accountable for the duty (*Re Dixon* [1902] 1 Ch. 248), or as regards the unappointed whole or part of a fund subject to a general power (see *Porte v Williams* [1911] 1 Ch. 188); or as regards a *donatio mortis causa* (see *Re Hudson* [1911] 1 Ch. 260); or as regards a legacy so far as it is payable out of the proceeds of real estate (see *Re Spencer Cooper* [1908] 1 Ch. 130). The phrase does not include the costs of a transfer of mortgage (*Sewell v Bishopp*, 62 L.J. Ch. 615).

A direction to pay “testamentary expenses” out of residue or other special fund, did not amount to an “express provision” exonerating the fund from settlement estate duty, under s.19, Finance Act 1896 (c.28) (*Re King* [1904] 1 Ch. 363; *Re Lewis* [1900] 2 Ch.

176, cited EXPRESS); *secus*, where the direction was to pay "testamentary expenses and duties", for "duties" covered both the estate duty and the settlement estate duty (*Re Pimm* [1904] 2 Ch. 345, cited DUTIES).

The expression "testamentary expenses" in a will was held not to include estate duty payable under s.35 of the Australian Estate Duty Assessment Act: see *Shelley v NSW Institution for the Deaf* [1919] A.C. 650, cited DIFFERENT. See also *Re Goetze* [1949] Tas. S.R. 131.

A testatrix bequeathed several legacies and directed her executors to pay "testamentary expenses including death duties". It was held that the legatees were not entitled to have the duties payable under s.58(2) of the Finance Act 1910 (c.35), discharged out of the residue: see *Re Massey*, 90 L.J. Ch. 40.

A direction in a will to executors to pay testamentary expenses out of a mixed fund of real and personal estate does not affect the position that legacies payable out of that fund must, so far as they are payable out of the real estate, bear a rateable proportion of estate duty (*Re Owers* [1941] Ch. 17).

The costs of all proper parties to proceedings for determining the scope of, or ascertaining the persons entitled to, a gift, are "testamentary expenses", especially when the difficulty arises from the language of the will (*Morrell v Fisher*, 4 D.G. & S. 422; *Re Groom* [1897] 2 Ch. 407; *Re Baumgarten*, 82 L.T. 711); but generally the costs of ascertaining the person entitled to a legacy, etc. are payable thereout (R.S.C. Ord.65 r.14(b); *Re Lycett*, 13 T.L.R. 373; see also *Re Whittaker* [1911] 1 Ch. 214); yet the discretion of the court has not been taken away by that rule, when testamentary expenses are provided for (see *Re Vincent* [1909] 1 Ch. 810).

The costs of an administration action are "testamentary expenses" (*Miles v Harrison*, 9 Ch. 316; *Harloe v Harloe*, L.R. 20 Eq. 471, in which last case Hall V.C., refused to follow *Gilbertson v Gilbertson*, 34 Bea. 354, and *Stringer v Harper*, 28 L.J. Ch. 643; *Miles v Harrison* and *Harloe v Harloe* were followed in *Sharp v Lush*, above, *Penny v Penny*, 11 Ch. D. 440, and in *Re Chapman*, 71 L.T. 778; see also *Lees v Lees*, Ir. Rep. 6 Eq. 159; *Browne v Groombridge*, 4 Mad. 495, on which see *Kilford v Blaney*, 31 Ch. D. 56); but where such costs are increased by the administration of real estate such increase is borne by the real estate (*Patching v Barnett*, 51 L.J. Ch. 74, applied in *Re Betts* [1907] 2 Ch. 214; *Re Copland*, 44 W.R. 94; but see *Re Middleton*, 50 L.J. Ch. 525). But the decision of Fry J. in *Re Middleton* was reversed, and *Patching v Barnett* was established by the Court of Appeal (*Re Middleton*, 19 Ch. D. 552), which ruling has not been altered by s.2(3) of the Land Transfer Act 1897 (c.65), and the rule remains that the costs of an administration action are "testamentary expenses" and payable out of the personal estate, except so far as they are increased by the administration of real estate, in which case such increase is borne by the real estate (*Re Jones* [1902] 1 Ch. 92; cp. *Dean v Bulmer* [1905] P. 1, and *Re Vickerstaff* [1906] 1 Ch. 762, both cited ESTATE). See now Administration of Estates Act 1925 (15 & 16 Geo. 5, c.23) s.34, and *Re Eleanor Taylor's Estate and Will Trusts* [1969] 2 W.L.R. 1371.

So, the costs of a successful opposition to a will (*Re Clemow*, above), or even of an unsuccessful opposition to a will the proof of which has been established under a compromise, one of the terms of which was that such costs should be paid out of the estate, are "testamentary expenses" (*Brown v Burdett*, 53 L.J. Ch. 56); *secus*, where no such terms have been arranged (*Re Prince* [1898] 2 Ch. 225), except as regards the costs of the executors in upholding the will (*Re Prince*). Semble, that costs of properly

TESTAMENTARY

requiring proof of will in solemn form (when only cross-examination and non-contentiously producing additional evidence is resorted to) would be “testamentary expenses” (per Stirling J., *Re Prince*).

In *Re Clemow*, above the question arose on a direction in Clemow’s will to pay his “widow’s testamentary expenses”; the widow died intestate; held, that the costs of obtaining letters of administration to her estate were part of her “testamentary expenses”, although there was no testament, for “‘testament’ has ceased to have its purely etymological meaning”, and “testamentary expenses”, in such a direction, means expenses relating to the administration of deceased persons; the widow’s estate being wholly personalty, it was also held that estate duty thereon was also payable by Clemow’s trustees. See further *Re Treasure* [1900] 2 Ch. 648, above.

By s.125(7) of the Bankruptcy Act 1883 (c.52) (see now Act of 1914 (c.59) s.130(6)), “testamentary expenses incurred in and about the debtor’s estate” by the legal representative of a deceased insolvent debtor, are a preferential debt upon the estate; held, by Holl J., at Newcastle-upon-Tyne County Court, that these words include not merely the cost of obtaining probate, but also the reasonable expenses of investigating the position of the debtor’s affairs, and generally of administering his estate prior to the bankruptcy administration order (*Re Turnbull*, 29 S.J. 557). The phrase also includes costs properly incurred in an administration action (*Re York*, 36 Ch. D. 233; *Re Chapman*, 71 L.T. 778, above).

Funeral expenses, the ascertaining testator’s debts and their amounts (including rent current at the decease), and the costs of warehousing specific legacies, are “testamentary expenses” (*Sharp v Lush*, 10 Ch. D. 468, above). See EXECUTORSHIP EXPENSES. Cp. *Re Michie*, 42 Sc. L.R. 386, cited EXPENSES.

Finance Act 1894 (c.30) s.9(1): see *O’Grady v Wilmot* [1916] A.C. 231, cited AS SUCH; *Re Morris* [1927] W.N. 146.

“Testamentary expenses” (Intestates’ Estates Act 1890 (c.29) s.6) “is merely a slip in draughtsmanship, and really means expenses of administration” (per Chitty J., *Re Twigg* [1892] 1 Ch. 579).

Where in a will there was a direction to pay “testamentary expenses” out of residue, it was held that “testamentary expenses” did not include foreign duty on foreign land specifically devised (*Re Mathews’ Will Trusts*, *Bristow v Mathews* [1961] 1 W.L.R. 1415).

TESTAMENTARY GUARDIAN. Is a guardian of an infant appointed by will; the need of, and the power of appointing, whom being shown and first enacted by Tenures Abolition Act 1660 (c.24), which abolished guardianship in chivalry and converted the old tenures into free and common socage (1 Bl. Com. 462). By that statute the power was solely in the father, but the mother, in certain cases, might by deed or will appoint a guardian (Guardianship of Infants Act 1886 (c.27) s.3).

As to the powers of a testamentary guardian, see s.9 of the Tenures Abolition Act 1660 (c.24), on which see *Re Helyar* [1902] 1 Ch. 391, cited TRUSTEE.

As to his removal, see *F. v F.* [1902] 1 Ch. 688, and cases there cited.

See INFANT; WARD.

TESTAMENTARY INSTRUMENT. A deed, only to take effect at the death of the creator of the trust thereby declared, was held a “testamentary instrument” within s.7 of the Legacy Duty Act 1796 (c.52) (*Att-Gen v Jones*, 3 Price 368; but see on this case *Jeffries v Alexander*, 8 H.L. Cas. 611); but a deed settling property on the settlor for

life, and after his decease to others, is not a “testamentary” document, although it contains a power of revocation (*Thompson v Browne*, 3 My. & K. 32).

See INSTRUMENT; TESTAMENTARY DOCUMENT.

TESTAMENTARY MATTER. See MATTER.

TESTAMENTARY POWER. See POWER.

TESTATOR. “Testator” (Real Estates Charges Act 1867 (c.69) s.2) had its general meaning, and applied to any deceased person who had made a will; even where such will had not disposed of the testator’s beneficial interest in the lands upon which a lien for unpaid purchase money existed (*Dowdall v M’Cartan*, 5 L.R. Ir. 313, 642).

“Testator’s reasons” (Inheritance (Family Provision) Act 1938 (c.45) s.1(3)) do not include mere statements of intention (*Re Pugh* [1943] Ch. 387).

“Testator’s estate” (Inheritance (Family Provision) Act 1938 s.2(1)). No court would describe as a “testator” a person in respect of whom there has been a grant of letters of administration which has not been displaced (*Re Bidie* [1949] Ch. 121). See amendment contained in Intestates’ Estates Act 1952 (c.64) Sch.4.

See INTTESTATE.

TESTATUM. The testatum clause of a deed is that beginning “Now this indenture witnesseth”; the subsequent like clauses, when there are more than one, are also testatum clauses. Its office is to witness to the operative act to be effectuated by the deed.

TESTE. Its *teste* is “that part of a writ wherein the date is contained” (Jacob). See hereon 1 Bl. Com. 179, 3 Bl. Com. 274.

A will is proved (1) in common form by affidavit, or (2) per testes, i.e. in solemn form by calling the witnesses before the court (2 Bl. Com. 508); see hereon Wms. Ex. (12th edn), 209, 211; COMMON FORM BUSINESS.

TESTIMONIUM. The testimonium clause of a document is that at its end beginning with “in witness”, or “as witness”. See hereon Co. Litt. 6A.

TESTIMONY. (Criminal Justice Act 1988 (c.33) s.33(2A), as amended by the Criminal Justice Act 1991 (c.53) and the Criminal Justice and Public Order Act 1994 (c.33).) A child who could both understand questions and answer them in a manner which was coherent and comprehensible was capable of giving “intelligible testimony” (*DPP v M* [1998] 2 W.L.R. 604).

“Testimony” (Foreign Tribunals Evidence Act 1856 (c.113) s.1) is restricted to testimony which is in the nature of proof for the purpose of the trial (including written testimony), and does not extend to evidence which may be used in proceedings for inspection and discovery before trial (*Radio Corp of America v Rauland Corp* [1956] 1 Q.B. 618).

TESTING. See TEST.

TEXTILE FABRICS. “Whereas... the expression ‘textile fabrics’... is not precise enough as to the materials these gloves, mittens and mitts can be made of... the expression ‘textile fabrics’... should therefore be replaced by the expression ‘woven, knitted or crocheted fabrics, felt or nonwovens’.” (Preamble to Commission Regulation 2176/2002 EC of December 6, 2002, O.J. L331/3.)

THAINUS. See TAINI.

THAMES. “River Thames” (Metropolis Management Act 1879 (c. cxcviii)): see s.2; BANK; *London CC v London, Brighton & South Coast Railway* [1906] 2 K.B. 72, cited ALTERATION, and FLOOD.

In *Leary v Steeves* (*The Times*, December 15, 1881), where the owners of a bill of lading had the right to intercept the ship “at the mouth of the Thames”, the jury found that the “mouth of the Thames” included East Oaze Buoy, off the Mouse Light; the witnesses for the plaintiffs (in whose favour the verdict was found) stated that, in their opinion, “mouth of the Thames” was a considerable space of water, the eastern limit of which was between Shoeburyness and Sheerness; one witness gave the western limit as a line between Foulness and Warden Point.

“The Thames is a port or place where pilotage is compulsory” (per Evans P., *The Umsinga*, 80 L.J.P. 96, following *The Hankow*, 4 P.D. 197, cited PARTICULAR PROVISION).

Stat. Def., Thames Conservancy Act 1894 (c. clxxxvii) s.3.

“Bed of the Thames”: see BED.

THANE. See TAINI; Cowel, *Thane or Theyne*.

THAT IS TO SAY. “‘That is to say’ is the commencement of an ancillary clause which explains the meaning of the principal clause. It has the following properties: (1) it must not be contrary to the principal clause; (2) it must neither increase nor diminish it; (3) but where the principal clause is general in terms it may restrict it; see this explained with many examples, *Stukeley v Butler* Hob. 171; see also *Harrington v Pole Dy.* 77 b. pl. 38” (Elph. 622). But see *Bradley v Newcastle Pilots*, 23 L.J.Q.B. 35.

A policy on a corn dealer’s “stock in trade, ‘consisting of’ corn, seed, hay, straw, fixtures, and utensils in business”, was confined to these enumerated things, and did not extend to hops and matting, although such latter things would, but for the restrictive words, have come within “stock in trade” (*Joel v Harvey*, 29 L.T.O.S. 75).

In *Gover v Davis* (30 L.J. Ch. 505), a bequest of “also the whole of my property and effects, ‘that is to say’ my box, clothing, and bedding, etc. etc.”, was held to pass a reversionary interest in a residuary estate; and in like manner Wood V.C., held that the wide generality of “my personal property” was not cut down by being immediately followed by “consisting of money and clothes” (*Dean v Gibson*, L.R. 3 Eq. 713).

See NAMELY; COMPRISING; CONSISTING; VIDELICET.

THAT LAND. (Deer Act 1963 (c.36) s.10(3)(b).) “That land” means the land on which the shooting takes place and where the damage to crops was on adjoining land there was no defence under this section (*Traill v Buckingham* [1972] 1 W.L.R. 459).

THAT PART. “Attributable to that part”: see ATTRIBUTABLE.

THE. A requirement in a Ministry of Health Circular that notice of requisitioning should be served on the owner “or the agent” meant the owner’s estate agent and not, e.g. the owner’s husband (*Patchett v Leathem*, 65 T.L.R. 69).

“The children”, in a testamentary gift, construed as the existing children: see *Re Haseldine*, 31 Ch. D. 511, cited CHILD.

A reservation of full and free liberty to take “the coal”, etc. is not exclusive (*Sutherland v Heathcote* [1892] 1 Ch. 475, cited LIBERTY OF WORKING).

“Where the contributions . . . have been made” (Local Government Act 1929 (c.17) s.124(1)) as not meaning, necessarily, “where ‘all’ the contributions have been made”: see *Gissing v Liverpool Corp* [1935] Ch. 1.

“The credit”, in a guarantee, points to a definite credit—“something ascertained and known” (per Bramwell B., *Broom v Batchelor*, 25 L.J. Ex. 299; but the majority of the court was against him in the conclusion, partly led up to by the dictum just cited).

Costs out of “the estate”, in an order by the House of Lords in an appeal in a probate action: held to mean, only the personal estate, as it was only over that that the court

appealed from had jurisdiction (*Charter v Charter*, 45 L.J. Ch. 705). But, possibly, that ruling may have been varied by Pt I of the Land Transfer Act 1897 (c.65).

“The justice”, to hear a summons under s.31 of the Vaccination Act 1867 (c.84), did not need to be the same justice who signed the summons (*Southcombe v Yeovil* [1897] 1 Q.B. 343).

“The principal mansion house”: see *Gilbey v Rush* [1906] 1 Ch. 11, cited CONSENT. See Settled Land Act 1925 (c.18) s.65.

“The property” in goods does not pass to an indorsee in blank of a bill of lading (who merely takes as a pledgee) so as to render him liable for freight under s.1, Bills of Lading Act 1855 (c.111); nor (semble, per Lord Blackburn) would any pledgee or mortgagee be so liable (*Sewell v Burdick*, 10 App. Cas. 74). See also *Brandt v Liverpool, etc. Co* [1924] 1 K.B. 575.

“The property”, when not a sufficient description in a vendor and purchaser contract: see *Shardlow v Cotterill*, 20 Ch. D. 90, cited PURCHASED; *McMurray v Spicer*, L.R. 5 Eq. 527; *secus*, *Plant v Bourne* [1897] 2 Ch. 281.

“The right to any relief claimed” (the old R.S.C. Ord.16 r.1, and County Court Rules 1889 Ord.3 r.1—see now R.S.C. Ord.15 r.4 and County Court Rules 1936 Ord.5 r.1) meant that several plaintiffs might only be joined when claiming the same relief (*Smurthwaite v Hannay* [1894] A.C. 494; *Carter v Rigby* [1896] 2 Q.B. 113). See hereon *Compania, etc. v Houlder* [1910] 2 K.B. 354, and cases therein cited.

“The said facts” (pleas of fair comment in libel action): see *The Aga Khan v The Times Publishing Co* [1924] 1 K.B. 675. See also *Kemsley v Foot* [1952] A.C. 345; Defamation Act 1952 (c.66) s.6.

Legacy of “the” stocks, shares, and securities particularised in schedule, held to be specific and not general legacies: see *Re Hawkins* [1922] 2 Ch. 569.

“The lottery” (Betting and Lotteries Act 1934 (c.58) s.22(1)). The use of the word “the” in this context meant that the printing of lottery tickets which did not refer to any specific lottery was not an offence (*McKay v Gillies* [1956] 1 W.L.R. 1402).

“The exclusive right”: see EXCLUSIVE RIGHT.

“The light”: see LIGHT.

“The minister”: see MINISTER.

See A; FISHERY; RIGHT OF SALE.

THE LAW OFFICERS. See LAW OFFICER.

THE SAME DAMAGE. For the meaning of “the same damage” in s.1(1) of the Civil Liability (Contribution) Act 1978, see *Greene Wood & McClean LLP v Templeton Insurance Ltd* [2009] EWCA Civ 65.

THE STATE. See STATE.

THEATRE. “Theatres” (Licensing Act 1872 (c.94) s.72(4)) did not include a music hall (*R. v Inland Revenue Commissioners*, 21 Q.B.D. 569). See further *Fredericks v Howie*, 31 L.J.M.C. 249, cited PLACE, and TENEMENT).

In *Ritchie v Scottish Cinema & Variety Theatres Ltd* (1929) S.C. 350, it was held that a picture house was not a “theatre” for the purpose of building restrictions applicable to a theatre.

Stat. Def., Cinematograph Films Act 1948 (c.23) Sch.2 para.44; Shops Act 1950 (c.28) s.74; Theatres Trust Act 1976 (c.27) s.5.

See PLACE; STAGE PLAY.

THEATRICAL PRODUCTION. Stat. Def., Corporation Tax Act 2009 inserted by Finance Act 2014 Sch.4.

THEFT

THEFT. “A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and and steal shall be construed accordingly” (Theft Act 1968 (c.60) s.1).

Where goods are given to another in exchange for a stolen cheque, the loss of those goods is a loss “caused by theft” within the meaning of a clause in an insurance policy (*Dobson v General Accident Fire and Life Assurance Corp* [1989] 3 W.L.R. 1066).

“In the course of furtherance of theft” (Homicide Act 1957 (c.11) s.5(1)). The “course” of theft is begun when perpetration is begun—it covers the period of attempt of the crime as well as the crime. If a burglar is interrupted in the course of perpetration and murders in order to get away, it is still murder done in the course of theft (*HM Advocate v Graham* (1958) S.L.T. 167).

Stat. Def., Theft Act 1968 (c.60) ss.1, 24(4); Limitation Act 1980 (c.58) s.4(5).

Cp. EMBEZZLE; PETTY LARCENY; RAPINE; ROBBERY. See further THIEF; THIEVES.

THEFT-BOTE. See BOTE.

THEIR. In *Boreham v Bignall* (19 L.J. Ch. 461), a substitutional gift to “their children” was held by Wigram V.C., as conclusively showing that one wife only of the first beneficiary was in the contemplation of the testator, and that that wife must have been the one living at the date of the will. See WIFE. See also AT.

A gift to “their children” of a husband and wife, means the children of both, so that children of the surviving spouse by a second marriage are not included (*Whittet’s Trustees v Mitchell*, 29 Sc. L.R. 834).

“Their children”: held to mean “their respective children” (*Arrow v Mellish*, 1 D.G. & S. 355; *Wills v Wills*, L.R. 20 Eq. 342, cited AT THEIR DEATH).

In a covenant by two or more for themselves, “their executors, administrators, and assigns”, the word “their” is necessarily read distributively, because the parties do not anticipate that they will have the same executors, etc.; but the word will not convert a covenant otherwise joint into a separate covenant (*Whyte, or White v Tyndall*, 13 App. Cas. 263).

In a freezing order (what was previously known as a Mareva Injunction) the words “their assets and/or funds” were not apt to cover assets or funds which belonged or were assumed to belong beneficially to someone other than the person restrained (*Federal Bank of the Middle East Ltd v Hadkinson* [2000] 2 All E.R. 395, CA).

“Their respective issue”: see *Stewart’s Trustees v Walker*, 42 Sc. L.R. 426.

“Should require for their manufacture”: see *Associated Portland Cement Manufacturers v Tolhurst* [1902] 2 K.B. 660, cited ASSIGNS.

“Their lives”: see JOINT LIVES.

THELLUSSON’S ACT. Accumulations Act 1800 (c.98). This Act does not derive its popular name from a legislator, but because its need was shown by the eccentric and impolitic accumulation of income of the estate of a deceased person which the skill of Mr Thellusson’s professional advisers enabled him, as the law then stood, to legally direct by his will: see ELDEST.

See LOUGHBOROUGH’S ACT.

THEM. “Them” refers to its last antecedent; and for an application of that rule, see *Gray v Garman*, 12 L.J. Ch. 259.

THEME. “‘Theme’ (sometimes written *theame* corruptly) is an old Saxon word, and signifieth *potestatem habendi in nativos sive villanos, cum eorum sequelis, terris, bonis et catallis*. But *teame*, sometime corruptly written *theame*, is of another

signification; for it is also an old Saxon word, and signifieth where a man cannot produce his warrant of that which hee bought according to his voucher" (Co. Litt. 116A). See further Cowel, *Teame*.

Cp. TEAME.

THEN. "If property be given upon certain events to such persons as shall then be next of kin or relations of the testator, the persons standing in that relation 'at the period in question', whether so or not at the death of the testator, are, upon the terms of the gift, entitled. Where the gift is not to those who will then be, but to those who will (or would) then be 'entitled' as, next of kin by statute, the word 'then' will be understood as referring to the period when they will be entitled in possession. The persons to take will be not those who would have been entitled if the testator had then died, but those who would then be entitled if the testator, when he died, had died intestate" (3 Jarm. (8th edn), 1642).

The cases cited in Jarman for that proposition were thus dealt with by Thesiger L.J., in *Mortimore v Slater* (7 Ch. D. 329; affirmed in House of Lords, *nom. Mortimore v Mortimore*, 4 App. Cas. 448): "The cases seem to me to divide themselves into three classes. The first of those classes is the one where the word 'then', as an adverb of time, is attached to the description of the class; and in that case, as in *Wharton v Barker* (4 K. & J. 483, followed in *Valentine v Fitzsimmons* [1894] 1 I.R. 93, and in *Hutchinson v National Refuges for Homeless and Destitute Children* [1920] A.C. 794, cited NEXT-OF-KIN), and *Long v Blackall* (3 Ves. 486), it was decided that the word 'then' imported the time at which the class so described is to be ascertained. *Wheeler v Addams* (17 Bea. 417), is to a certain extent an exception to that rule; but I think that may be explained, because we find that in that case there is a reference in the limitation to one of the persons who had been a tenant for life before the limitation came into force.

"The second class of cases consists of those where words of futurity, but without the adverb of time, are attached to the description of the class, and in that class of cases we find no distinction drawn, but in every one of them we find that it was held that the words must speak from the time of the testator's death. The cases cited on that point have been *Holloway v Holloway* (5 Ves. 399), and *Doe v Lawson* (3 East, 292).

"The third class of cases is that where the word 'then', the adverb of time, is used, but where you find it used not in connection with the description of the class but in connection with the time at which the estate is to come into being. In that class of cases also, without any exception, we find it decided that you are to look at the class at the time of the testator's death. That is to be found in *Cable v Cable* (16 Bea. 507), in *Bullock v Downes* (9 H.L. Ca. 1), and in *Day v Day* (4 Ir. Rep. Eq. 385); and it is to be observed that in all these cases we do not find that any distinction is drawn from the use of the additional words, 'as if he had died intestate', but the point which has been looked at by the learned judges who decided those cases has been whether the word 'then' is attached to the description of the class, or to the time when the estate is to come into possession".

"Moreover, 'then' has more meanings than one, each equally common; it may mean 'at that time' or 'in that case'; and, unless the latter meaning be excluded by the context, it will be adopted rather than construe 'next of kin according to the statute' (the statute being expressly referred to), as meaning something different from what the

THEN

statute says it means" (3 Jarm. (8th edn), 1642, and cases there cited). The judgment of Thesiger L.J., *Mortimore v Mortimore*, 4 App. Cas. 448, was discussed in *Lucas-Tooth v Lucas-Tooth* [1921] 1 A.C. 594.

"Then", used twice in the same sentence, construed in the first instance as pointing to the event, and in the second as an adverb of time (*Gill v Barrett*, 29 Bea. 372).

"Then", construed as an adverb of time, not of contingency (*Baker v Lucas*, 1 Molloy, 481).

"Then", as an adverb of time, generally refers to the last antecedent (*Archer v Jegone*, 6 L.J. Ch. 340; *Palmer v Orpen* [1894] 1 I.R. 32; *Re Dundalk & Enniskillen Railway* [1898] 1 I.R. 232). See hereon *Heasman v Pearse*, 7 Ch. 285, cited SUCH. See *Griffiths v Eccles Provident Society* [1912] A.C. 483, cited NOMINATE. See *Humfrey v Humfrey*, 31 L.J. Ch. 622; *Blight v Hartnoll No.2*, 19 Ch. D. 294; *Pinder v Pinder*, 29 L.J. Ch. 527; *Druitt v Seaward*, 31 Ch. D. 234; *Re Milne*, 56 L.J. Ch. 543; *Boraston's Case*, 3 Rep. 19.

Where a will specified certain trusts, each of which was to operate if the preceding one failed, and then said: "and should the trust fund not vest as aforesaid then upon trust for the next of kin of the settlor", the word "then" was to be construed as referring to an event and not as an adverb of time (*Falkiner v Commissioner of Stamp Duties* [1973] A.C. 565).

A testatrix directed that legacies be paid to certain named charities and continued: "then divided among the following [various other named charities]". The words "then divided" were held to refer to the division of residue after the legacies had been paid (*McAulay's Trustees v Royal National Lifeboat Institution* (1961) S.C. 307).

"Then" may be used as equivalent to "further", e.g. when there is a testamentary direction for payment of debts, and "then" a demise of lands (*Willan v Lancaster*, 3 Russ. 108).

"My 'then' next of kin": see *Re McFee*, 79 L.J. Ch. 676, cited NEXT OF KIN.

"Then", in a pleading, generally means "at that time" (see per Bosanquet J., *Thornton v Jenyns*, 1 M. & G. 184, 190); but sometimes it is ambiguous (*Stead v Poyer*, 14 L.J.C.P. 251).

The "then" value of a tramway undertaking, under Tramways Act 1870 (c.78) s.43: see *Re Oldham, Ashton & Hyde Electric Tramway and Ashton Corp* [1921] 3 K.B. 511. See *London Street Tramways Co v London CC* [1894] A.C. 456, cited TRAMWAY.

"Then and there" refers to the time and place last before mentioned (*Garret v Johnson*, 1 Raym. Ld., 576; see hereon *Davies v The King*, 10 B. & C. 89). Cp. *R. v Brownlow*, 3 P. & D. 52, cited INSTANTLY; *Derecourt v Corbishley*, 5 E. & B. 188, cited THEREUPON.

THEN IN BEING. See *Leader v Duffey*, 13 App. Cas. 294.

THEN LIVING. "Where life interests are bequeathed to several persons in succession, terminating with a gift to a class of objects then living, the word 'then' is held to point to the period of the death of the person last named (whether he is or is not the survivor of the several legatees for life), and is not considered as referring to the period of the determination of the several prior interests" (3 Jarm. (8th edn), 1670, and cases there cited; see further *Watson Eq.* (2nd edn), 1224-5, 1377; *Britnell v Walton* [1869] W.N. 238; *Heasman v Pearse*, 7 Ch. 275, cited SUCH; *Cooper v Macdonald*, L.R. 16 Eq. 258).

"Other children then living", may be modified by a subsequent proviso that grandchildren should take the share "the parent would have taken if living": see *Re Blantern* [1891] W.N. 54.

"Then living", as regards the rule against perpetuities: see *Re Wood* [1894] 3 Ch. 381.

See LIVING; THEN.

THEN SURVIVING. Burgesses "at that time surviving and remaining", to elect to vacancies in a borough council granted by charter; held, to mean burgesses for the TIME BEING (*R. v Devonshire*, 1 B. & C. 618). See *Re Coulden* [1908] 1 Ch. 320, cited ISSUE.

"I declare that if any daughter of mine shall die without lawful issue her surviving her share shall thereupon devolve upon my other children then surviving". The phrase "then surviving" in the declaration which was contained in a will referred to the time of the death of the child (*Re Williams' Will Trusts* [1949] 2 All E.R. 11).

THENCEFORTH. "Thenceforth", after an event, has the same meaning as "from and after" (*Farrer v Billing*, 2 B. & Ald. 177); and it, or its equivalent "thenceforward", will not have a retroactive operation (*R. v Madeley*, 15 Q.B. 49).

"Shall thenceforth cease and determine": see *Re Chapman* [1904] 1 Ch. 431, cited FORFEITURE.

THENECIUM. A hedgerow or dike-row (Cowel).

THEOLONIO. A toll; see hereon *Holcroft v Heel*, 1 B. & P. 400, cited arg. *Egremont v Saul*, 6 L.J.K.B. 205; cp. CUSTOM. "Theolonium is a barbarous word" (*Hill v Priour*, 2 Show. 35).

THERE. "Then and there": see THEN.

THERE AND THEN. "There and then" in the Water Act 1989 (c.15) s.148(1) meant at or proximate to the site where a sample was taken and on the occasion of the taking of the sample (*Att-Gen's Reference (No.2 of 1994)* [1994] 1 W.L.R. 1579).

THERE OR NEARBY. See NEARBY.

THEREABOUTS. By a charterparty a defendant undertook to load a vessel "of the measurement of 180 to 200 tons or thereabouts"; held, he was not exonerated because the vessel happened to be 257 tons burthen (*Windle v Barker*, 25 L.J.Q.B. 349). See further MORE OR LESS.

"Or thereabouts", when qualifying an estimated quantity of mines, ought to be construed in the same way as if applied to the surface (*Davis v Shepherd* 1 Ch. 410). See MORE OR LESS.

A bequest of "3000 or thereabouts", to be raised by accumulating income, is not void for uncertainty (*Oddie v Brown*, 28 L.J. Ch. 542; see thereon 1 Jarm. (8th edn), 475 et seq.).

See SAY; THEREBY.

THEREAFTER. Mortgagee "always thereafter" to be employed: see *Bradley v Carritt* [1903] A.C. 253, cited MORTGAGE.

"Thereafter made": see *Re Manning*, 30 Ch. D. 480, cited MADE.

A sum of money was ordered to be paid on February 1 and a similar sum "per month thereafter". Held, that the word "thereafter" referred to February 1 and not to the month of February. Consequently the latest day for subsequent payments was the first day of each calendar month (*Re a Debtor (No.266 of 1940)* [1940] Ch. 470).

See HEREAFTER; SHALL.

THEREAFTER

THEREAFTER TO BE BORN. A testamentary gift to a class composed of persons who may be living at a future event, or “thereafter”, or “afterwards” to be born, is an executory gift, and not a contingent remainder, so that all the members of the class, whenever born, are entitled to share (*Miles v Jarvis*, 24 Ch. D. 633, following *Re Lechmere and Lloyd*, 18 Ch. D. 524, and rejecting *Brackenbury v Gibbons*, 2 Ch. D. 417). In *Dean v Dean* ([1891] 3 Ch. 150), Chitty J., also followed, *Re Lechmere and Lloyd*, the words before him being, a devise to A for life, and on his death to such of his children then living “as either before or after” his death should attain 21.

THEREBY. An attesting witness to a will loses a legacy “thereby” given him (Wills Act 1837 (c.26) s.15); *semble*, that does not apply to a share in a SECRET TRUST not appearing on the face of the will (*O’Brien v Condon* [1905] 1 Ir. R. 51, differing from *Re Fleetwood* 15 Ch. D. 594); see also *Blackwell v Blackwell* [1929] A.C. 318.

“Or thereby”, is used in Scottish conveyancing descriptions of quantities in much the same sense as “or thereabouts” (see hereon *Hetherington v Galt*, 42 Sc. L.R. 571).

“Thereby endangered” (Criminal Damage Act 1971 (c.48) s.1(2)(b)). The word “thereby” relates to the damage to property and not to the act which caused the damage. So that the intention or recklessness charged under this section must be directed to the possible dangers caused by the destroyed or damaged property, and not to the dangers inherent in the method of causing the destruction or damage (*R. v Streer* [1987] 3 W.L.R. 205). But, distinguishing this case, it has since been held that the word “thereby” relates to the damage or destruction intended by the accused and not to the actual damage or destruction caused (*R. v Dudley* [1989] Crim. L.R. 57).

“Thereupon and thereby”: see THEREUPON.

THEREFROM. “In respect of any office or employment on emoluments therefrom” (Income and Corporation Taxes Act 1970 (c.10) s.181(1)). A fee paid to a professional footballer by his club as an inducement to him to consent to his transfer to another club was an emolument flowing “from” his employment by the second club, and was therefore chargeable to Sch.E income tax under this section (*Shilton v Wilmshurst* [1991] 2 W.L.R. 530).

THEREIN. “Therein named”: see *Re Browne* [1903] 1 Ch. 188, cited NAMED.

THEREON. “Thereon” (Rating and Valuation (Apportionment) Act 1928 (c.44) s.2(2)). In the first part of this definition of agricultural buildings the word “thereon” refers back to the land as opposed to the buildings. In the second part of the definition, which covers market gardens, the word means on the market garden as a whole whether inside or outside the buildings (*Perrins v Draper* [1953] 1 W.L.R. 1178; *Eastwood v Herrod* [1971] A.C. 160).

THEREINBEFORE. See HEREINBEFORE.

THEREOF. “According to the ordinary rule of grammatical construction, the word ‘thereof’ must apply to the last antecedent” (per Cockburn C.J., *Perry v Davis*, 3 C.B.N.S. 776). See hereon *Re Phillips*, 66 L.J. Ch. 714; *Llewellyn v Glamorgan Vale Railway* [1898] 1 Q.B. 473, cited OWNER.

“For the duration thereof”: see *National Telephone Co v Kingston-upon-Hull*, 89 L.T. 291.

THERETO. “Thereto” (Prescription Act 1832 (c.71) s.3) does not refer to “dwelling-house”, etc. but to “access and use of light”; and “the right thereto”, in the section, means “the right to the same access and use of light to and for any

dwelling-house, workshop, or other building" (per Fry L.J., *Scott v Pape*, 31 Ch. D. 554). See thereon *Greenwood v Hornsey*, 33 Ch. D. 471.

"With respect thereto" (New Towns Act 1946 (c.68) Sch.I para.3); this phrase limited the scope of the public local inquiry held under para.3 because it meant "with respect to the objections" (*Franklin v Minister of Town & Country Planning* [1948] A.C. 87).

"Thereto adjoining": see ADJOIN.

"Thereunto belonging": see BELONGING; ENJOYED.

THERETOFORE. See *R. v Great Western Railway*, 28 L.J.M.C. 246; *Portsmouth v Smith*, 13 Q.B.D. 184; 10 App. Cas. 364.

"Persons intending to keep inns theretofore kept by other persons" (Alehouse Act 1828 (c.61) s.4, with which s.14 is to be read) meant "theretofore", not in the sense of "at 'any' time before", but in the sense of "immediately preceding", and that the premises had been "kept" as an inn (see KEEP); therefore, where premises had been licensed and the licence had been annually renewed but the premises had not been "kept" as an inn for 13 years and had been used as a draper's shop; held, that the justices had no power to license under s.4 or to transfer under s.14 (*R. v Cotham* [1898] 1 Q.B. 802, cited RENEWAL); but a "mere temporary cessation of the sale of intoxicating liquor was not a conclusive bar to justices" under either section (per Alverstone C.J., *Wilson v Crewe Justices* [1905] 1 K.B. 491, which case see as to what would satisfy "kept" in this connection; cp. *Southend-on-Sea v White*, 83 L.T. 408, cited OCCUPATION).

"Theretofore usually demised": see USUALLY.

THEREUNTO. See THERETO.

THEREUPON. It is as nearly accurate as possible to say that, in its primary sense, "thereupon" is the equivalent of "immediately" (*Vaughan v Watt*, 9 L.J. Ex. 272). But "whereupon" confers a right without involving the idea of any time within which it is to be claimed or enforced (*Burslem v Attenborough*, L.R. 8 C.P. 122).

"Thereupon defendant gave plaintiff in charge of a policeman", in a pleading; held, that "thereupon" was equivalent to "then and there" (*Derecourt v Corbishley*, 5 E. & B. 188; see further THEN); but, in another context, "thereupon" was regarded as the equivalent of "in consequence of" (*Groux Co v Cooper*, 8 C.B.N.S. 814).

"Thereupon and thereby": see these terms distinguished, *Atkinson v Raleigh*, 3 Q.B. 79.

See UPON.

THERewith. Land occupied "together with" a house, etc. (Representation of the People Act 1832 (c.45) s.25), or house, etc. with any land "occupied therewith" (s.27); "therewith", in that connection, had reference more to time than to locality; therefore, land at a distance from, if occupied at the same time as and used with, a house, etc. could be estimated for the purpose of making up a 10 borough qualification, provided the land and building were so occupied by the claimant during the qualifying year "as owner", or "as tenant under the same landlord" (*Capell v Aston*, 8 C.B. 1; *Collins v Thomas*, 22 L.J.C.P. 38; *Saunders v Searson*, 50 L.J.C.P. 117).

"Lands held therewith" (Lands Clauses Consolidation Act 1845 (c.18) s.49): see *Holt v Gas Light & Coke Co*, L.R. 7 Q.B. 728.

A solicitor's office, though structurally separated from, yet within the curtilage of, his dwelling-house, was "therewith occupied" within the Schedule to House Tax Act 1851 (c.36); and, though used solely for his business, yet was not a "tenement", so as

to be entitled to exemption under s.13(2), Customs and Inland Revenue Act 1878 (c.15) (*Nichols v Malim* [1906] 1 K.B. 272). See hereon *Russell v Coutts*, 19 Sc. L.R. 197, cited TENEMENT.

“Together with all ways; etc. and appurtenances . . . therewith used, possessed, occupied, or enjoyed, or accepted reputed taken or known as part parcel or member thereof, or as appurtenant or belonging thereunto”, “are words quite large enough to convey the adjoining road *usque ad medium filum vicæ*” (per Willes J., *Simpson v Dendy*, 8 C.B.N.S. 468).

“Ways now used therewith”: see WAYS.

See RIGHT; TOGETHER WITH; WITH.

THERM. See Gas Act 1972 (c.60) s.48; Gas Levy Act 1981 (c.3) s.7.

THESE PRESENTS. A clause in a mortgage empowered the mortgagee (who was a solicitor) to charge for all business done by him “in or about these presents”; held, that this did not enable him to charge for business relating to the mortgaged property done by him subsequent to the mortgage; “‘these presents’ mean, not the property, but ‘this deed’” (per Kay J., *Field v Hopkins*, 44 Ch. D. 529). See Mortgagee’s Legal Costs Act 1895 (58 & 59 Vict., c.25), cited PROFIT.

THIEF. To call a man a “thief” is slander, and needs no innuendo (*Blumley v Rose*, 1 Roll. Ab. 73; *Slowman v Dutton*, 10 Bing. 402) but the context or circumstances may show that it was a mere vague word of abuse not actionable.

Stat. Def., Theft Act 1968 (c.60) ss.1, 24(4).

See FELON; REPUTED THIEF; THEFT.

THIEVES. The exception of “thieves” in a bill of lading, generally means the same as in a marine insurance, and only applies to thieves “external” to the ship (*Taylor v Liverpool & Great Western Steam Co*, L.R. 9 Q.B. 546).

As regards the statutory form of a marine insurance, “‘thieves’ does not cover clandestine theft, or a theft committed by any one of the ship’s company, whether crew or passengers” (Marine Insurance Act 1906 (c.41) Sch.I r.9). See also *La Fabrique de Produits Chimiques Societe Anonyme v Large* [1923] 1 K.B. 203.

See ROBBERS; ROBBERY; THEFT.

THIN CAP LEGISLATION. “Thin cap” is an abbreviation of ‘thin capitalisation’. Like transfer pricing legislation, thin cap legislation seeks to address what the Revenue considers to be transfers of profits, and therefore transfers of tax bases, from this jurisdiction to another. The subject was explained by Advocate General Geelhoed in the reference for a preliminary ruling in the present case to the Court of Justice of the European Communities (‘the ECJ’): 3. There are two principal means of corporate finance: debt and equity finance. Many Member States draw a distinction in the direct tax treatment of these two forms of finance. In the case of debt finance, companies are generally permitted to deduct interest payments on loans for the purpose of calculating their taxable profits (i.e., pre-tax), on the basis that this constitutes current expenditure incurred for the pursuit of the business activities. In the case of equity finance, however, companies are not permitted to deduct distributions paid to shareholders from their pre-tax profits; rather, dividends are paid from taxed earnings. 4. This difference in tax treatment means that, in the context of a corporate group, it may be advantageous for a parent company to finance one of the group members by means of loans rather than equity. The tax incentive to do so is particularly evident if the subsidiary is located in a relatively ‘high-tax’ jurisdiction, while the parent company (or indeed an intermediate group company which provides the loan) is located in a

lower-tax jurisdiction. In such circumstances, what is in substance equity investment may be presented in the form of debt in order to obtain a more favourable tax treatment. This phenomenon is termed ‘thin capitalisation’. By thus manipulating the manner in which capital is provided, a parent company can effectively choose where it wishes profits to be taxed. 5. Many States, viewing thin capitalisation as abusive, have implemented measures aimed at countering this abuse. These measures typically provide for loans which fulfil certain criteria to be regarded for tax purposes as disguised equity capital. This means that interest payments are recharacterised as profit distributions, so the subsidiary cannot deduct all or part of the interest payment from its taxable income, and the payment is subject to any applicable rules on dividend taxation.” (*Test Claimants In the Thin Cap Group Litigation v HM Revenue and Customs* [2011] EWCA Civ 127.)

THING. “Thing”, in such a phrase as “building, erection, or thing”, in a statutory prohibition, will generally be read ejusdem generis; thus, a lot of stones placed one upon another in the bed of a river but not fastened or cemented together was not a “thing” within such a phrase (*Colbran v Barnes*, 11 C.B.N.S. 246).

A person’s hand or fingers are not a thing.” (*R v Bentham* [2005] UKHL 18 at [8] per Lord Bingham of Cornhill).

“Other matter or thing”: see *Winsborrow v London Joint Stock Bank*, 88 L.T. 803, cited *HANG*.

“Destructive thing”: see *DESTRUCTIVE*.

“Navigable thing”: see *NAVIGABLE*.

See *ARTICLE*; *OTHER*; *THINGS*.

THING IN ACTION. See *CHOSE IN ACTION*.

(Married Women’s Property Act 1882 (c.75) s.24). A right of action which a wife had against her husband for his negligence before the parties were married was a “thing in action” (*Curtis v Wilcox* [1948] 2 K.B. 474).

THINGS. A bequest of “all things”, in a particular house, will not pass bonds and other choses in action (*Popham v Aylesbury*, 1 Amb. 68; see thereon *Wms. Exs.* (12th edn), 758).

A residuary bequest of “all things not before bequeathed”, will not pass testator’s share in leaseholds (*Cook v Oakley*, 1 P. Wms. 302, cited 2 Jarm (8th edn), 998). But where there was a bequest of leaseholds, household goods, wearing apparel, tools, moneys, bonds, bills and debts, “and all things that I may possess at my decease”: held, that freeholds passed (per North J., *Re Turner*; *Arnold v Blades*, 36 S.J. 28, citing *Smyth v Smyth*, 8 Ch. D. 567, 568; but see *Stuart v Bute*, 1 Dow. 73, in which last case “things” was confined to matters ejusdem generis).

A bequest of all “other things” has a very wide meaning (*Trafford v Berridge*, 1 Eq. Ca. Ab. 201). See further *EVERY THING ELSE*; *EVERYTHING*.

“Other valuable things”: see *VALUABLE*.

Cp. *EFFECTS*.

“Goods, merchandise, or other things whatsoever”: see *OTHER*.

“Things duly done”: see *DULY*.

“Matters or things”: see *MATTER*.

Things “so fixed as to form part of the realty”: see *REALTY*.

THINGS IN ACTION. An interest in an unadministered estate is a thing in action for the purposes of the Proceeds of Crime (Northern Ireland) Order 1996 (*Re Maye* [2008] UKHL 9).

THINK

THINK FIT. A power to trustees to invest in such securities as they “think fit” means such as they “honestly, though imprudently, think fit” (*Re Smith* [1896] 1 Ch. 71; *Re Brown*, 29 Ch. D. 889; *Lewis v Nobbs*, 8 Ch. D. 591). Cp. DISCRETION.

So, a power to pardon on such conditions as to the donee of the power “may seem fit” is not invalid on the ground that it would legalise torture and mutilation, for “barbarous practices are impliedly excluded” (*Watson’s Case*, 9 A. & E. 783).

Forfeiture Act 1870 (c.23) s.12, gave the administrator of a felon’s property absolute power to let, etc. any part of such property as to him “shall seem fit”; “that imports that he must exercise some discretion and take some care in the matter; but, as long as he does that, the provisions of s.17 apply” (per Cozens-Hardy L.J., *Carr v Anderson* [1903] 1 Ch. 90, cited FORFEITURE). See Law of Property Act 1925 (15 Geo. 5, c.20) s.7. Cp. PLEASE.

A statutory power to erect, e.g. urinals, in such situations as the authority “think fit”, does not justify urinals where they constitute a private nuisance to individuals (*Parish v London*, 67 J.P. 55).

In a lease executed under a power to lease “with or without fine, and rendering such rents and services as the donee should think fit”, no rent whatever need be reserved (*Talbot v Tipper*, Skinner, 427; *Re Molton*, 2 Ir. Com. Law Rep. 634; *Sheehy v Muskerry*, 1 H.L. Cas. 576; Sug. Pow. 433–436, 816). If the power were “rendering such ‘yearly’ rents”, etc. possibly the rule would be different (*Talbot v Tipper*, above).

“As shall seem reasonable and proper”, imports as wide an authority as “as he shall think fit” (*Taylor v Mostyn*, 23 Ch. D. 583).

A power to a railway company to charge “such reasonable sum as the company may think fit in each case” for exceptional services, does not give the company the absolute power to fix the sum; the reasonableness of the charges is a question of fact for the jury: see *Midland Railway v Myers* [1908] 2 K.B. 356, [1909] A.C. 13.

See *Lauder v Brown*, 27 Sc. L.R. 194, cited NUMBER.

See further SEEM MEET.

See IF THEY SHALL THINK FIT; GENERAL POWER.

THINK NECESSARY. “As they think necessary” (Income and Corporation Taxes Act 1970 (c.10) s.453). These words confer a very wide discretion on the Inland Revenue Commissioners. The word “think” means forming an opinion in the exercise of a proper legal discretion (*Wilover Nominees Ltd v IRC* [1973] 2 All E.R. 977).

See NECESSARY.

THINK PROPER. See THINK FIT; REASONABLE AND PROPER; GENERAL POWER.

THINKS. “If the Secretary of State thinks” means the same as “If the Secretary of State considers” and is simply more modern language. See Lord McIntosh of Haringey speaking for the Government to an amendment to the Railways and Transport Safety Bill 2003–04 HL, Deb July 10, 2003 c.432.

THIRD COUNTRY. (Asylum and Immigration Appeals Act 1993 (c.23) Sch.2 para.5(6); H.C. 251 para.180K). The phrase “third country” in H.C. 251, para.180K was not a term of art as long as an asylum seeker can be removed to a safe country, which may be the applicant’s country of nationality (*R. v Special Adjudicator, Ex p. Abudine (Mohammed Siad Ahmed)* [1995] Imm.A.R. 60).

THIRD PARTY. “Third parties”, in clause in insurance policy: see *Royal London Insurance Society Ltd v Barrett* [1928] 1 Ch. 411.

See SEVENTH.

THIRD PARTY PROCEEDINGS. Stat. Def., Limitation Act 1980 (c.58) s.35(1).

THIRD PARTY RISKS. Road Traffic Act 1930 (c.43) s.35, Road Traffic Act 1972 (c.20) s.143: connotes that the insurer is one party to the contract, that the policy-holder is another party, and that claims made by others in respect of the negligent use of the car may be naturally described as claims by third parties (*Digby v General Accident Fire & Life Assurance Corp* [1943] A.C. 121).

THIRD PERSON. See ANOTHER PERSON.

THIRDS. By a settlement a provision out of real and personal estate was made for the wife "in lieu of dower or thirds"; held, the husband having died intestate, that the provision was in satisfaction of dower out of realty and of thirds out of personalty, and that the wife could claim nothing under the Statute of Distribution 1670 (c.10) (*Thompson v Watts*, 31 L.J. Ch. 445); but the language of the settlement may confine that ruling to the property comprised therein (*Sambourne v Barry*, Ir. Rep. 6 Eq. 28).

As to what is meant by the working of a barge on a system of "thirds", see *Associated Portland Cement Manufacturers Ltd v Ashton* [1915] 2 K.B. 1.

THIRTY-NINE ARTICLES. See hereon, and as to their meanings, *Voysey v Noble*, L.R. 3 P.C. 357. The general rules for their exposition are:

"On the one hand, to ascertain the true construction of those articles of religion and formularies, referred to in each charge, according to the legal rules for the interpretation of statutes and written instruments; and, on the other hand, to ascertain the plain grammatical meaning of the passages which are charged as being contrary to, or inconsistent with, the doctrine of the church" (per Westbury C., delivering the judgment in the "Essays and Reviews" cases, *Williams v Salisbury (Bishop)* and *Wilson v Fendall*, 2 Moore P.C.N.S. 424). But the court "is not compelled, as in cases affecting the right to property, to affix a definite meaning to any given article of religion the construction of which is fairly open to doubt, even should the court itself be of opinion (on argument) that a particular construction was supported by the greater weight of reasoning" (per Hatherley C., delivering the judgment, *Voysey v Noble*, L.R. 3 P.C. 385). "It is a very different thing where the authority of the articles is totally eluded, and the party deliberately declares the intention of teaching doctrines contrary to them" (per Lord Stowell, *His Majesty's Procurator v Stone*, 1 Hagg. Con. 429); and in order to establish such a contrary teaching it is not necessary to show a contradiction, *totidem verbis*, of some passage in the articles (*Voysey v Noble*, above).

THIS. "This" is a simple word of relation, and its ordinary grammatical meaning will not be extended so as to include something else than that to which it relates (*Bryson v Russell*, 14 Q.B.D. 720).

When a clause in an Act of Parliament speaks of "this Act", that means "the whole of the enactments in the Act" (per Esher M.R., *Re Williams and Stepney* [1891] 2 Q.B. 257, cited SUBMISSION).

The words "this is my will", in a will were held to refer not to the particular instrument, but to the testamentary disposition constituted by the will and codicils at the date of the testatrix's death: see *Re Smith* [1916] 2 Ch. 368.

"This side": see GIBALTAR.

THOROUGH. "Thorough repair": see per Fletcher Moulton L.J., *Lurcott v Wakeley* [1911] 1 K.B. 905, cited REPAIR.

THOROUGHFARE. "Thoroughfare" (Metropolitan Police Act 1839 (c.47) s.54) can include an access passageway to a market (*Brandon v Barnes* [1966] 1 W.L.R. 1505).

"Nearest public thoroughfare": see NEAREST.

THOUSAND

See HIGHWAY; PUBLIC HIGHWAY; OBSTRUCT.

THOUSAND. Evidence of usage is admissible to show that “thousand”, in a contract, means some figure other than 1000, e.g. 1200 (*Smith v Wilson*, 1 L.J.K.B. 194).

THREAT OF UNLAWFUL VIOLENCE. See AFFRAY.

THREATENING. “Threatening abusive or insulting words or behaviour” (Public Order Act 1986 (c.64) s.4(1)(a)). The offence under this section requires that the accused must intend or be aware that his words or behaviour are threatening, abusive or insulting and must be directed at another person (*Winn v DPP* (1992) 142 New L.J. 527).

THREATS TO KILL. A charge of threats to kill (plural) under s.16 of the Offences Against the Person Act 1861 is technically duplicitous, but not necessarily fatally flawed (*R. v Marchese* [2008] EWCA Crim 389).

THREE ESTATES. The three estates of the realm are (1) the lords spiritual, (2) the lords temporal, and (3) the commons.

THREE MONTHS. See *Haworth v Sickness & Accident Assurance*, 28 Sc. L.R. 394, cited EVERY. See Law of Property Act 1925 (c.20) s.61, reversing the common law rule in *Phipps v Rogers* [1925] 1 K.B. 14, that “three months’ notice at common law means prima facie lunar months”.

THREE TIMES GREATER. Houses and buildings had to pay lighting rate “three times greater” than land (Lighting and Watching Act 1833 (c.90) s.33); this did not mean “greater than by three times”, but means “three times greater than”, so that if the whole rate was treated as 6d., land would have paid 112d., i.e. one-fourth (*R. v Somersetshire*, 22 J.P. 431; *R. v South Eastern Railway*, 19 L.J.N.C. 121; see further *R. v Midland Railway*, L.R. 10 Q.B. 389). See PROPERTY OTHER THAN LAND.

THRIFT. “Thrift scheme”: Stat. Def., Wages Council Act 1959 (c.69) s.24; Wages Councils Act 1979 (c.12) s.28.

THROAT. In an indictment for murder by cutting the “throat” of the deceased: “throat” is that which is commonly called the throat, and is not confined to that part of the neck which is scientifically called the throat; therefore, the allegation is proved by showing that the jugular vein was divided, although the carotid artery was not cut (*R. v Edwards*, 6 C. & P. 401).

THROUGH. Under a grant of way from A to B “in, through, and along” a particular way, the grantee is not justified in making a transverse road “across” the same (*Senhouse v Christian*, 1 T.R. 560; see hereon *Wimbledon Common Conservators v Dixon*, 1 Ch. D. 370). See ACROSS.

The power enabling a local authority (Public Health Act 1875 (c.55) s.16) to carry a sewer “into, through, or under” lands, was not confined to carrying it underground (*Roderick v Aston*, 5 Ch. D. 328).

“Through, over, or under”, in a reservation of wayleave royalty: see *Great Western Railway v Rous*, L.R. 4 H.L. 650.

“Through an agent”, under R.S.C. old Ord.11 r.1 (e): see *National Mortgage & Agency Co of New Zealand v Gosselin*, 38 T.L.R. 832.

An interruption is done by a person claiming “through” a covenantor for quiet enjoyment if such person acquires title by an act of commission on the part of the covenantor, e.g. by such covenantor “consenting to” a judgment in an action of ejectment by such person against him to which the covenantor had a good defence (*Cohen v Tannar* [1900] 2 Q.B. 609); *secus*, if the covenantor’s sin is one of omission

only, e.g. default in performing his own covenant, or, probably, if he merely allows judgment to go by default against him (*Kelly v Rogers* [1892] 1 Q.B. 910). Semble, “through” is the best word for the covenantee in the phrase “claiming by, from, through, or under” the covenantor. See further CLAIMING UNDER.

A marine insurance against damage to machinery “through” a latent defect means a damage “in consequence of”, or “caused by”, such defect, and does not cover damage which is a development of the latent defect itself (*Oceanic SS Co v Faber*, 95 L.T. 607).

Payment of wages to a discharged seaman “through, or in the presence of, the superintendent, unless a competent court otherwise directs” (Merchant Shipping Act 1894 (c.60) s.131(1)): see *Keslake v Board of Trade* [1903] 2 K.B. 453.

“Through or under him” (Arbitration Act 1975 (c.3) s.1). An assignee of a debt claiming against the debtor where the debt arose out of a contract subject to an arbitration agreement, claimed “through or under” the assignor within the meaning of this section (*Rumput (Panama) SA v Islamic Republic of Iran Shipping Lines* [1984] 2 Lloyd’s Rep. 259).

“Persons claiming through a member”: see PERSON.

“Through the intervention”: see INTERVENTION.

Person “through whose act”: see BY WHOSE.

THROUGH RATE. “Through rates” for through traffic, under Railway and Canal Traffic Act 1888 (c.25): see s.25, on which see *London & India Docks Co v Great Eastern Railway and Midland Railway* [1902] 1 K.B. 589, cited RAILWAY COMPANY.

THROUGH TOLL. See *Warwick & Birmingham Canal Navigation v Birmingham Canal Navigation*, 3 Ry. & Can. Traffic Cas. 113, cited TOLL.

THROUGH TRAFFIC. In a railway sense, “local traffic”, meant traffic arising and terminating on the railways of the company spoken of; “through traffic” meant traffic passing to, from or over such railways from, to or over the railways of any other company: see hereon s.25 of the Railway and Canal Traffic Act 1888 (c.25).

In an agreement by one railway company to work another company’s line “so as to develop and accommodate not merely the through traffic, but also the local traffic of the district to be served by the railway”, “through traffic” means such traffic as that for which the railway provides the shortest and most convenient route, and not that which may be more conveniently or economically carried by any other route (*Eastern & Midland Railway v Midland Railway*, 5 Ry. & Can. Traffic Cas. 235). See further as to “through traffic” in an agreement, *Central Wales Railway v London & North Western Railway*, 4 Ry. & Can. Traffic Cas. 101. See also SHORTEST ROUTE; Railways Act 1921 (c.55) s.86.

“Through traffic rate and route” (Regulation of Railways Act 1873 (c.48) s.11): see *Central Wales Railway v Great Western Railway*, 10 Q.B.D. 231, following *Greenock & Wemyss Bay Railway v Caledonian Railway*, 3 Ry. & Can. Traffic Ca. 145; *Belfast Central Railway v Great Northern Railway, Ireland*, 4 Ry. & Can. Traffic Ca. 159. See further FORWARDING CO; USING.

THROUGHOUT. Where a vessel was to sail for the her loading port by March 15, “the act of God . . . throughout this charterparty, always excepted”, and was prevented by an act of God from sailing till March 18; held, that “throughout” might exonerate the shipowner from liability for not sailing on the 15th, but did not affect the condition upon the performance of which the charterer contracted to load the ship (*Crookewit v Fletcher*, 26 L.J. Ex. 153).

TICKET

Where a codicil revokes the appointment of an executor and substitutes another person in his stead and goes on to declare that the will shall be construed as though the name of such other person had throughout the will been used instead of that of the person whose executorship was revoked, that generally will not revoke personal benefits given by the will to the person whose executorship is revoked: see *Re Freeman* [1901] 1 Ch. 681.

(Companies Act 1948 (c.38) s.331.) The section imposes a duty on a company which is being wound up to keep proper books of account for the whole of the two-year period immediately preceding the commencement of the winding-up. Failure to keep books properly for part of this period is a breach of this duty (*Laurenson v HM Advocate* (1960) S.L.T. 113; 1959 J.C. 106).

TICKET. "Deliver up" his ticket: see DELIVER.

Stat. Def., Betting, Gaming and Lotteries Act 1963 (c.2) s.55(1), see also s.22; *Barker v Wood*, 48 T.L.R. 402; Lotteries Act 1975 (c.58) s.16; Lotteries and Amusements Act 1976 (c.32) s.23; "a document or documents evidencing an agreement (wherever made) for the carriage of any person" (Finance Act 1994 (c.9) s.43(1)).

"Ticket of leave": see Penal Servitude Acts 1852 (c.99) s.9, 1864 (c.47) ss.4 and 10, and Sch.A, and 1891 (c.69) s.5.

See SEE BACK.

TIDAL RIVER. "That is called an arm of the sea where the sea flows and reflows, and so far only as the sea flows and reflows" (Hale, *De Jure Maris*, 12; Hargr. Tracts, Pt 1, Ch.5, 17 et seq.). Therefore, a river is a tidal river in such parts only as are within the regular ebb and flow of the highest tides (*Reece v Miller*, 8 Q.B.D. 626; see further *Mussett v Burch*, 35 L.T. 486; *Hudson v McRae*, 33 L.J.M.C. 65; *Hargreaves v Diddams*, L.R. 10 Q.B. 582).

See NAVIGABLE. Cp. TIDAL LAND.

TIDAL WATER. "Tidal waters" (Salmon and Freshwater Fisheries Act 1923 (c.16) s.11) are not confined to the area between the high water mark and the low water mark, but include any part of the sea within territorial waters where there is a real and perceptible ebb and flow of the tide, whether lateral or vertical (*Ingram v Percival* [1969] 1 Q.B. 548).

(Merchant Shipping Act 1894 (c.60) ss.546, 742.) Gravesend Reach of the River Thames is a "tidal water" within the meaning of these sections and not, therefore, a "harbour" (*The Powstaniec Wielhopolski* [1988] 3 W.L.R. 723).

Stat. Def., Merchant Shipping Act 1894 (c.60) s.742; Land Drainage Act 1930 (c.44) ss.41(6), 77(2); Control of Pollution Act 1974 (c.40) s.56; Land Drainage Act 1976 (c.70) s.27.

TIDE. See AT ALL TIMES OF TIDE; NAVIGABLE; NEAP; SHORE.

"Tide permitting": see PERMITTING.

TIED HOUSE. A "tide house" usually connotes an inn or beer-house rented from a person or firm from whom the tenant is, by agreement, compelled to purchase liquors or other commodities to be therein consumed or sold. See hereon *Rice v Noakes* [1900] 1 Ch. 213, cited MORTGAGE, affirmed in *HL* [1902] A.C. 24.

Tied houses are not essentially part of the business, and their cost is not a deduction from the taxable profits of a brewer (*Watney v Musgrave*, 5 Ex. D. 241; but see *Smith v Lion Brewery* [1911] A.C. 150; cp. *Hancock v Gillard* [1907] 1 K.B. 47, cited RENT PAYABLE; see COMPENSATION; see also *R. v Commissioners of Customs and Excise*, 97

L.J.K.B. 771; *Brickwood v Reynolds* [1898] 1 Q.B. 95, cited PURPOSES). See further *Southwell v Savill* [1901] 2 K.B. 349; *Strong v Woodfield* [1905] 2 K.B. 350, cited CONNECTED WITH. As to assigning the agreement: see SPIRITUOUS LIQUOR.

Rateable value of: see *Bradford v White* [1898] 2 Q.B. 630, cited ANNUAL VALUE; *Re London CC and City of London Brewery Co* [1898] 1 Q.B. 393, cited TRADE INTEREST.

“Fair market value” of a tied house: see *Re Chandler’s Brewery Co and London CC* [1903] 1 K.B. 569, cited VALUE.

TIED PUB. Stat. Def., Small Business, Enterprise and Employment Act 2015 s.68.

TIES. “38. In my judgment, however, Aikens LJ, by referring to ‘support’, was not there intending to lay down a defining qualification of ties. As Christopher Clarke LJ pointed out in the course of argument, a person may have very close ties with another state but in the particular circumstances little or no prospect of support. . . . Consideration of whether a person has ‘no ties’ to such country must involve a rounded consideration of all the relevant circumstances.” (*CG (Jamaica) v Secretary of State for the Home Department* [2015] EWCA Civ 194.)

TIGH. “‘Tigh, or teage’, a close or enclosure, a croft” (Cowel).

TIGHT. “The representation that the ship is ‘tight, staunch, and strong, and every way fitted for the voyage’ seems to be equivalent to the warranty of seaworthiness and fitness, which is implied by law on the part of the shipowner” (Carver (12th edn), 356, and cases there cited). See SEAWORTHY.

TILL. See UNTIL.

TILLAGE. “‘Tillage’ and ‘agricultural’ land are synonyms (Co. Litt. 85B, cited by Willes J., *Vigar v Dudman*, L.R. 6 C.P. 470). To constitute a conversion of land into tillage “there must be a breaking of the soil for agricultural purposes; a garden and orchard, for the purposes of tithes, have always been considered different from agricultural land, for agricultural tithes are great tithes—the tithes on a garden or orchard are small tithes. Tillage involves ploughing or something analogous (see Johnson’s Dictionary by Latham, and Webster’s Dictionary). “A distinction is made between ‘tillage’, ‘pasture’, ‘garden’, and ‘orchard’, in the Tillage Acts 1515 (c.1), 1535 (c.22) and 1551 (c.5)” (per Charles, arg. *Vigar*). The planting of land with trees is not a conversion of it into tillage, nor is the building of a house and using part of the land as an orchard, or, semble, as a garden for the convenience of the house, such a conversion (*Vigar*, L.R. 6 H.L. 212).

TIMBER. “By the term ‘timber’ is meant properly such trees only as are fit to be used in building and repairing houses; thus oak, ash, and elm trees are considered ‘timber’ in all places, and under whatsoever circumstances they are grown (Co. Litt. 53A). But only trees of not less than six inches in diameter or 2 feet girth (allowing for irregularities of shape) appear to be reckoned or considered as ‘timber’ (*Whitty v Dillon* 2 F. & F. 67)” (Woodf. (24th edn), 745). And no wood “is timber until of 20 years’ growth” (*Dunn v Bryan*, Ir. Rep. 7 Eq. 143; *Foster v Leonard*, Cro Eliz. 1; see further as to what are, and what are not, timber trees, *Honywood v Honywood*, L.R. 18 Eq. 306).

“Many descriptions of trees, which are not generally considered as timber, are so in some places by the custom of the country, being there used for the purpose of building; thus it has been laid down that horse-chestnuts, limes, birch, beech, asp. walnut trees, and the like may under such circumstances be deemed timber, and are therefore protected by the law as such (*Chandos v Talbot*, 2 P. Wms. 606; *Palmer’s Case*, Co.

Litt. 53A, Hargrave's note, 349). It has been determined that, in the county of York, birch trees are timber, because they are used in that county for building sheep-houses, cottages, and such mean buildings (*Cumberland's Case*, Moore, 812); and it would seem that, in Hampshire, willows have been considered as 'timber', by the custom of the country (*Layfield v Cowper* 1 Wood. 330; *Guffly v Pindar* Hob. 219)" (Woodf. (24th edn), 745, 746). See further *Gordon v Woodford*, 29 L.J. Ch. 222. To the like effect is the passage in Dart already referred to, where it is laid down that "timber" includes, "by local custom, beech and various other trees; even trees which are primarily fruit trees, as cherry, chestnut, and walnut (*Chandos v Talbot*, above)". So white-thorn may be timber (*Palmer's Case*, above). But though Dart does not mention the condition emphasised in the passage extracted from Woodfall, namely that to bring trees, not usually regarded as "timber", within that word, they must by the custom be "used for the purpose of building", yet it would seem that that at least is an important element in such a construction.

Beech trees are timber in Buckinghamshire, but not in Oxfordshire (*Dashwood v Magniac* [1891] 3 Ch. 306).

Where beech trees—or, as it should seem, any other trees—are by the custom of the country, and having regard to their nature and age, "timber", "no evidence can be received to qualify its character of timber by showing that it was not deemed to be such in the county unless the tree contained 10 feet of solid wood" (Woodf. (24th edn), 746, citing *Aubrey v Fisher*, 10 East, 446; *Chandos v Talbot*, above; Co. Litt. 53).

Larch trees are not timber, except by a local custom (per Kay L.J., *Dashwood v Magniac*, above; *Re Harrison*, 54 L.J. Ch. 617, 618).

"Although pollards have been said not to be timber (Plowd. 470; *Phillipps v Smith*, 15 L.J. Ex. 201), yet Lord King inclined to think them timber, provided their bodies were sound and good; and in an action to recover the value of pollards under the description of timber and timber-like trees, the plaintiff recovered a verdict (*Rabbett v Raikes*, Suffolk Sum. Ass. 1803, cor. Macdonald C.B.; *Channon v Patch*, 5 B. & C. 897)" (Woodf. (24th edn), 746). Dart says (149, 150), "As a general rule, pollards would seem not to be timber; if sound, however, they may be timber by local custom"; but a little further down the latter page (and citing *Rabbett v Raikes*, above, and 2 P. Wms. 606), it is said that timber and timber-like trees "would seem to include sound pollards" (see also Sug. V. & P. (14th edn), 32). Cp. STANDELL; UNDERWOOD.

Under the words of a grant of "timber and timber-like trees now growing and being or which shall hereafter grow and be upon the said lands", Romilly M.R., held that "thinnings" were included, and that it was for the grantee to determine what should be cut (*Gordon v Woodford*, above).

A devise for life carries the "immediate right to the underwood, though not to other WOOD" (per Leach V.C., *Butler v Borton*, 5 Mad. 43); therefore, an exception from such a devise to trustees to take "timber or wood" for repairs, does not include underwood, for the exception connotes wood to which the tenant for life would not be entitled (*Butler*).

Ornamental timber was distinguished from ordinary timber in *Magennis v Fallon*, 2 Malloy, 590; see also *Ford v Tynite*, 2 D.G.J. & S. 127.

"Timber at measurement weight": see *Great Western Railway v Caswell* [1904] 2 K.B. 508.

The proceeds of timber when rightfully felled and sold under an order of the court, become personal estate for all purposes (per Cozens-Hardy J., *Hartley v Pendarves*

[1901] 2 Ch. 498, following *Steed v Preece*, 43 L.J. Ch. 687, and *Hyett v Mekin*, 25 Ch. D. 735, and rejecting *Field v Brown*, 27 Bea. 90).

Stat. Def., Forestry Act 1919 (c.58) s.3; Settled Land Act 1925 (c.18) s.48; National Parks and Access to the Countryside Act 1949 (c.97) s.79(6); Plant Health Act 1967 (c.8) s.1(2)(a); Forestry Act 1967 (c.10) s.3(4).

See TIMBERS.

TIMBER DUES. See *Burstall v Baptist*, 21 W.R. 485.

TIMBER ESTATE. This phrase was first employed in *Ferrand v Wilson*, 15 L.J. Ch. 48. It has been said that a timber estate is "an estate in which trees are cut, not for the immediate wants of the owner or for the value of the trees themselves, but to preserve the estate by allowing the natural succession to grow up" (per Rigby, arg., *Dashwood v Magniac*, 60 L.J. Ch. 813). In this last case, Bowen L.J. (in a characteristically learned and lucid judgment), defined a timber estate as one "which is cultivated merely for the produce of saleable timber, and where the timber is cut periodically"; but see per Kay L.J., *Dashwood*. See also *Honywood v Honeywood*, L.R. 18 Eq. 309, 310.

"The whole essence of a timber estate is that there should be a regular course of cultivation; the main object being that the timber should produce for the tenant for life income at periodical intervals" (per Stirling J., *Pardoe v Pardoe*, 82 L.T. 547, cited WASTE).

See TIMBER; WASTE. Cp. MINERAL ESTATE.

TIMBER YARD. See *Haddock v Humphrey* [1900] 1 Q.B. 609, cited WHARF.

TIMBERLODE. "A service by which tenants were to carry timber from the woods to the lord's house" (Jacob; see further COWEL).

TIMBERS. "Main timbers", in a covenant to repair, will include iron beams which are used as substitutes for timbers (*Manchester Bonding Warehouse Co v Carr*, 5 C.P.D. 507).

TIME. "Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred to shall, unless it is otherwise specifically stated, be held to be Greenwich mean time (Statutes (Definition of Time) Act 1880 (c.9) s.1). See DAY; OF THE CLOCK; SUNSET.

There is probably no general rule, in computing time from an act or event, that the day is to be inclusive or exclusive; it depends on the reason of the thing according to the circumstances (*Lester v Garland*, 15 Ves. 248); but, referring to that case, Bayley J., said, "All the authorities on the subject are reviewed by Sir W. Grant, who takes this distinction—that where the act done from which the computation is made is one to which the party against whom the time runs is privy, the day of the act done may reasonably be included; but where it is one to which he is a stranger, it ought to be excluded" (*Hardy v Ryle*, 9 B. & C. 608). Accordingly, it was there held that where the action against a justice had, under Constables Protection Act 1750 (c.44) s.8, to be brought "within six calendar months after the act committed", the day of doing the act by the justice was excluded. See also FROM.

(R.S.C. Ord.65 r.27(48) see now Ord.62 App. 2 Pt X r.2(4).) In calculating the time occupied by a trial for the purpose of refresher fees the times of the actual hearing in court should be added together (*Wright v Bennett* [1947] K.B. 828). Time spent in conference in the precincts of the court, either in the corridor or judge's room, for the purpose of arriving at a settlement, should also be included (*Lawson v Tiger* [1953] 1 W.L.R. 503).

The computation of time in criminal matters is governed by the same rule as in civil matters (*Radcliffe v Bartholomew* [1892] 1 Q.B. 161, cited CALENDAR MONTH).

"Time", in s.150 of the Public Health Act 1875 (c.55): see *Macclesfield Corp v Macclesfield Grammar School* [1921] 2 Ch. 189; *Bristol Corp v Sinnott* [1918] 1 Ch. 62; *Sunderland v Gray* [1928] Ch. 756.

"Time or times when they ought to be delivered", in s.51(3) of the Sale of Goods Act 1893 (c.71): see *Sharpe & Co Ltd v Nosawa & Co* [1917] 2 K.B. 814.

"Time elapsing" (Bankruptcy Act 1914 (c.59) s.1): see *Mason v Bolton's Library* [1913] 1 K.B. 83.

"Time which the driver has for rest" (Road Traffic Act 1960 (c.16) s.73(4); see Transport Act 1968 (c.73) s.96). Time spent by the driver going back to base in a private car (sometimes driving and sometimes being driven) was held to count as time for rest for the purposes of this section (*Witchell v Abbott* [1966] 1 W.L.R. 852).

"Time for appealing" (Landlord and Tenant Act 1954 (c.56) s.64(2)). This included the time for lodging a petition to the House of Lords for leave to appeal (*Re 20 Exchange Street, Manchester, Austin Reed v Royal Insurance Co* [1956] 1 W.L.R. 765).

"Time and place at which that article was tested" (Weights and Measures Act 1963 (c.31) s.26(7)). Where an article is purchased and taken to an inspector of weights and measures who tests it, the other similar articles in the shop, although "available for testing", were held not to be available at the "time and place" of the first one (*Sears v Smiths Food Group* [1968] 2 Q.B. 288).

The "time of entering up . . . judgment" (Judgments Act 1838 (c.110) s.17) is the time when judgment is pronounced in court, not the time when it is formally entered (*Parsons v Mather & Platt* [1977] 1 W.L.R. 855).

As to an agreement to give time for payment, see FORBEAR, also VALUABLE.

"One and the same time, and from one and the same source": see ONE TIME.

"Time of the essence of the contract": see ESSENCE.

Claim "consequent on loss of time": see LOSS.

Reasonable time: see REASONABLE.

See AT ALL TIMES; AT ANY TIME; AT THE PRESENT TIME; AT THE TIME; CERTAIN TIME; CLEAR; CONVENIENT TIME; FORTNIGHT; HOUR; LIMITATION; MEMORY; MONTH; ONE TIME; PERIOD; SITTING; STIPULATED; TERM; WEEK.

TIME BARGAIN. A "time bargain" is not necessarily a gaming contract. "If I buy a crop of apples which grow next year on a particular tree, that is a 'time bargain', but it is not invalid" (per Bramwell L.J., *Thacker v Hardy*, 4 Q.B.D. 685). But the usual meaning of "time bargain", as used on the Stock Exchange, is that it is a contract to pay "differences", i.e. to receive or pay the difference between the price of the subject-matter at one time and its price at another time—and then it is a gaming contract (*Grizewood v Blane*, 21 L.J.C.P. 46; *Rourke v Short*, 25 L.J.Q.B. 196; *Thacker v Hardy*, above). See hereon *Hibblewhite v M'Morine*, 8 L.J. Ex. 271; *Coles v Bristowe*, 38 L.J. Ch. 81; *Maxsted v Paine*, 38 L.J. Ex. 41. See *Buitenlandsche Bank v Hildesheim*, 47 S.J. 707.

TIME BEING. The phrase "for the time being" may, according to its context, mean the time present, or denote a single period of time; but its general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the future, and

which may (and probably will) vary from time to time (*Ellison v Thomas*, 31 L.J. Ch. 867; 32 L.J. Ch. 32; *Coles v Pack*, L.R. 5 C.P. 65). See also *Re Gunter's Settlement Trusts* [1949] Ch. 502.

A testamentary gift in remainder to testator's "next of kin for the time being" means the next of kin living at his death (*Moss v Dunlop*, Johns. 490).

Where rights are to be enforced by, or penalties are to be paid to, officers (whether parochial or otherwise) "for the time being", that connotes officers who are such when the action is commenced, not those who were such when the right arose or the penalty was incurred (*Addey v Woolley*, 8 Taunt. 691; *Doe d. Higgs v Terry*, 5 L.J.M.C. 27; *Graves v Colby*, 8 L.J.Q.B. 57).

Covenant with the owners "for the time being" of land: see *Forster v Elvet Colliery Co* [1908] 1 K.B. 629, cited ASSIGNS.

"Owner for the time being" of shares in a company; held, not to include a holder who had sold his shares after a call made, but before it was payable (*Aylesbury Railway v Thompson*, 2 Ry. Ca. 668; but see *London & Brighton Railway v Fairclough*, 10 L.J.C.P. 133).

As to the effect of making a promissory note payable to the secretary "for the time being" of a named society or company, see *Storm v Stirling*, 23 L.J.Q.B. 298, cited SECRETARY.

A direction to pay calls on shares which, at or after his death might be or become due in respect of shares "for the time being" constituting part of testator's residuary personal estate; held, to apply to calls on shares held by the testator at his death, but not to shares afterwards acquired by the trustees (*Bevan v Waterhouse*, 3 Ch. D. 752).

"Amount for the time being secured" (Building Societies Act 1874 (c.42) s.15(2)): see *Re Neath Building Society*, 43 Ch. D. 158, cited AMOUNT.

"Surveyor for the time being": see *Kendal v Lewisham*, 67 J.P. 236, cited SURVEYOR.

Persons who are "for the time being" trustees under Settled Land Act 1882 (c.38) s.2(8), were those expressly appointed for the purposes of the Act, or else had at the time of the proposed sale thereunder, a present and immediate power to sell or consent to a sale (*Wheelwright v Walker*, 23 Ch. D. 752). See Settled Land Act 1925 (c.18) s.30(1).

"It has been said that if a power to vary the rights of parties be communicated to the 'trustees for the time being', it cannot be exercised by a single trustee" (Lewin (10th edn), 718, citing *Lancashire v Lancashire*, 2 Phill. 664).

A power of sale to the "trustees for the time being" was (by virtue of Conveyancing Act 1881 (c.41) s.30) exercisable by the executors of the last surviving trustee (*Re Pixton and Tong*, 46 W.R. 187). Cp. Trustee Act 1925 (c.19) s.18.

"Valuation list for the time being in force": see *Westminster v Army & Navy Auxiliary Supply* [1902] 2 K.B. 133, cited VALUATION.

"For the time being" (Trade Marks Registration Act 1875 (c.91) s.5): see *Wood v Lambert*, 29 S.J. 455.

"For the time being", in s.45(2) of the Finance (No.2) Act 1915 (c.89), meant at the date of assessment and not during the period of charge: see *Wankie Colliery Co v Inland Revenue Commissioners* [1922] 2 A.C. 51.

"The amount for the time being payable" by the landlord in s.1(4) of the Increase of Rent and Mortgage Interest (War Restrictions) Act 1915 (c.97): see *Nicholson v Jackson*, 90 L.J.K.B. 1121.

"For the time being" (Import Duties Act 1958 (c.6) s.2(3)(c)) refers to the time when the dutiable goods were grown, produced or manufactured and consigned to the United Kingdom (*Gallaher v Commissioners of Customs and Excise* [1968] 2 Q.B. 674).

"For the time being used for ecclesiastical purposes" (Town and Country Planning Act 1971 (c.78) s.56(1)(a)) means being used for ecclesiastical purposes at the time when the works (for which exemption from the necessity of obtaining listed building consent is sought) are to be carried out (*Att-Gen, ex rel. Bedfordshire CC v Howard United Reformed Church Trustees, Bedford* [1976] A.C. 363).

Where justices have jurisdiction "in the place where the person charged with the offence is for the time being" (Transport Act 1968 (c.73) s.107(3)) the time referred to is that when the proceedings were commenced (*R. v Hitchin Justices, Ex p. Hilton* [1974] R.T.R. 380).

"The time being" in art.2 of the Employers' Health and Safety Policy Statements (Exceptions) Regulations 1975 (SI 1975/1584) should be construed as meaning that "any one time" (*Osborne v Bill Taylor of Huyton* [1982] I.C.R. 168).

TIME CERTAIN. See CERTAIN TIME.

TIME CHARTER. See hereon *Wehner v Dene SS Co* [1905] 2 K.B. 92; *Turner v Haji Goolam Mahomed Azam* [1904] A.C. 826.

A time charterparty which was originally a demise of the ship is in modern usage an agreement to perform certain services for the charterers (*The Alresford* [1942] 1 All E.R. 503).

TIME IMMEMORIAL. See TIME OUT OF MIND.

TIME OFF. "Take time off... to undergo training" (Employment Protection (Consolidation) Act 1978 (c.44) s.27). In this section "time of" means those hours when the employee would normally have been at work and which it is reasonable that he should be allowed to take off to attend a training course (*Hairsine v Kingston upon Hull City Council* [1992] I.C.R. 212).

TIME OF PAYMENT. See STIPULATED.

TIME OR SITTING. Gaming Act 1710 (c.19) s.2: see SITTING.

TIME OUT OF MIND. "Some have said that 'time out of mind' should be said from time of limitation in a writ of right; that is to say, from the time of King Richard the First after the Conquest" (Litt. s.170), i.e. A.D. 1189. See LONG.

The synonym of this phrase is "time immemorial": "the expression 'time immemorial', or 'time whereof the memory of man runneth not to the contrary', is now, by the law of England, in many cases considered to include and denote the whole period of time from the reign of King Richard the First" (Prescription Act 1832 (c.71) preamble).

See PRESCRIPTION.

TIME PIECE. "Time pieces" (Carriers Act 1830 (c.68) s.1) included a chronometer (*Le Couteur v London & South Western Railway*, L.R. 1 Q.B. 54, cited PERSONAL LUGGAGE).

TIME POLICY. "A time policy is one in which the risk is limited by time alone" (Arn. (13th edn), Ch.16). Cp. VOYAGE.

Time policy of sea insurance: see POLICY; s.93, Stamp Act 1891 (c.39), on which see s.11 of the Finance Act 1901 (1 Edw. 7, c.7); *Royal Exchange Assurance v Sjoforsakrings* [1902] 2 K.B. 384, cited POLICY.

A policy of marine insurance is a "time policy" within the meaning of the Marine Insurance Act 1906 (c.41) s.39(5) even though the specified period of its duration may be extended by the parties thereto (*Compania Maritima San Basilio SA v Oceanus Mutual Underwriting Association (Bermuda)* [1977] Q.B. 49).

TIME RATE. Stat. Def., Wages Council Act 1979 (c.12) s.28.

TIME TABLES. See *Leslie v Young* [1894] A.C. 335, cited BOOK.

TIME TO TIME. See FROM TIME TO TIME.

TIME WORKER. Stat. Def., Wages Act 1986 (c.48) s.26.

TINKER. See PEDLAR.

TIPPLING ACT. Sale of Spirits Act 1750 (c.40), amended by Sale of Spirits Act 1862 (c.38); see ITEM; ONE TIME; RECOVER; SPIRITUOUS LIQUOR.

The Act "is intended to cover the case of liquor served out to persons coming to a licensed house for temporary refreshment, but not to cover the case of a guest living in an hotel" (per Macdonald L.J.C., *Guthrie v Ireland*, 28 Sc. L.R. 641, following Abinger C.B., *Proctor v Nicholson*, 7 C. & P. 67, and disregarding the doubts as to this last case of Denman C.J., *Hughes v Done*, 1 Q.B. 294, doubts which the latter learned judge based on *Gilpin v Rendle*, 1 Selwyn N.P. (10th edn), 55, and *Burnyeat v Hutchinson*, 5 B. & Ald. 241).

TIPS. See *Penn v Spiers & Pond* [1908] 1 K.B. 766, cited EARNINGS; *Great Western Railway v Helps* [1918] A.C. 141; *Skailes v Blue Anchor Line* [1911] 1 K.B. 360, cited REMUNERATION.

TIPSTAFF. See *G. v L.* [1891] 3 Ch. 128, fn.

TITHE. See TITHES.

TITHE FREE. If property is sold "tithe free", that is a material statement, and the purchaser is not bound to complete if it be untrue (*Ker v Clobury*, MS. Sug. V. & P. (14th edn), 321, correcting *Stanhope's Case*, cited *Drewe v Hanson*, 6 Ves. 678).

TITHE RENTCHARGE. "Expenses, rentcharge, or other sums, to be recovered as tithe rentcharge" (Tithe Act 1891 (c.8) s.10(4)); see further s.2, included redemption charges and expenses (*R. v Paterson* [1895] 1 Q.B. 31).

The definition of tithe rent-charge in the Tithe Act 1891 (c.8) was inapplicable to any payment in the City of London: see *Re Salter and Audry's Lease* [1921] 2 Ch. 141.

Tithe rent charge was abolished by the Tithe Act 1936 (c.43) s.1.

TITHES. "Tithes is an ecclesiastical inheritance collateral to the estate of the land, and of their proper nature due only to an ecclesiastical person by the ecclesiastical law" (*Priddle's Case*, 11 Rep. 1(b)); and were "the tenth part of all fruits, predial, personal, and mixt, which are due to God, and consequently to his churches ministers for their maintenance" (Cowel). See further Jacob; 2 Bl. Com. 23–32; 3 Cru. Dig. Title 22; COMMUTATION.

"Prædial tithes were such as arise merely and immediately from the ground; as grain of all sorts, hay, wood, fruit, herbs.

"Mixt tithes were those which arise, not immediately from the ground, but from things immediately nourished by the ground, as by means of goods depastured thereupon, or otherwise nourished with the fruits thereof; as colts, calves, lambs, chicken, milk, cheese, eggs.

"Personal tithes were such profits as do arise by the honest labour and industry of man, employing himself in some personal work, artifice, or negotiation; being the tenth part of the clear gain after charges deducted" (Phil. Ecc. Law, 1148).

TITHING

As to what were “great”, as distinguished from “small”, tithes, see *Daws v Benn*, 1 B. & C. 751; TILLAGE.

Compensation for, and commutation of, tithes were provided for by the Tithe Act 1836 (c.71), under s.12 of which Act “‘tithes’ shall mean and include all uncommuted tithes, portions and parcels of tithes, and all moduses, compositions real and prescriptive, and customary payments”.

Church Building Act 1851 (c.97) s.29: “‘tithes’ shall mean and include all commuted or uncommuted tithes, rent-charges in lieu of tithe, portions and parcels of tithes, and all moduses, compositions real and prescriptive, and customary payments”.

District Church Tithes Act 1865 (c.42) s.2: “‘tithes’ shall include commutation rent-charges, and all moduses, compositions, prescriptive and other payments, or redemption money, in lieu of tithes”.

“Tithes” in Real Property Limitation Act 1833 (c.27), was confined to tithes as between adverse claimants to tithes (*Grant v Ellis*, 11 L.J. Ex. 228; *Ely v Cash*, 15 L.J. Ex. 341; *Ely v Bliss*, 2 D.G.M. & G. 459; *Bunbury v Fuller*, 9 Ex. 128). See further *Payne v Esdaile*, 13 App. Cas. 613.

Tithes in A would pass under a devise of “land” in A, if there was no land there belonging to testator (*Ashton v Ashton*, 3 P. Wms. 386); so they might, or might not, be included in “my real estates” (*Evans v Evans*, 14 Jur. 383).

“Tenement” may include tithes: see TENEMENT.

See COMPOSITION; OUTGOING; TITHE RENTCHARGE.

TITHING. See HUNDRED.

A tithing was, “in its first appointment, the number or company of 10 men with their families, held together in a society, all being bound for the peaceable behaviour of each other” (Jacob).

TITLE. “‘Title’ properly (as some say) is when a man hath a lawful cause of entry into lands whereof another is seised, for the which hee can have no action, as title of condition, title of mortmain, etc. But legally this word (title) includeth a right also, as you shall perceive in many places in Littleton; and title is the more generall word; for every right is a title, but every title is not such a right for which an action lieth; and therefore *titulus est justa causa possidendi quod nostrum est*, and signifieth the meanes whereby a man commeth to land, as his title is by fine or by feoffment, etc.” (Co. Litt. 345B; see hereon Elph. 205).

“The word ‘title’ has different meanings. In one sense, it may import whether a party has a right to a thing which is admitted to exist; or it may mean whether the thing claimed does in fact exist” (per Coleridge J., *Adey v Trinity House*, 22 L.J.Q.B. 4).

When a certain number of years’ title to realty has to be shown, e.g. a 40 years’ title, “that means a title deduced for 40 years and for so much longer as it is necessary to go back in order to arrive at a point at which the title can properly commence. The title cannot commence *in nubibus* at the exact point of time which is represented by 365 days multiplied by 40. It must commence at or before the 40 years with something which is in itself, or which it is agreed shall be, a proper ROOT of title” (per North J., *Re Cox and Neve* [1891] 2 Ch. 118).

As to what is an objection to “title” within conditions of sale of realty, see *Forbes v Peacock*, 13 L.J. Ch. 46, disapproving *Bentham v Wiltshire*, 4 Mad. 44, and *Page v Adam*, 4 Bea. 269; *Price v Macaulay*, 19 L.T.O.S. 238; *Ashburner v Sewell* [1891] 3

Ch. 405 (see this case, which was followed in *Yandle & Sons v Sutton* [1922] 2 Ch. 199); *Simpson v Gilley*, 92 L.J. Ch. 194, on the distinction between an objection to title and an error.

A clause giving a vendor power to rescind contract of sale if objection or requisition be made “as to title, or evidence of title”, applies only where he has “some” title, and not where he sells knowing that he has none at all to the property (*Bowman v Hyland*, 8 Ch. D. 588, cited *WHATSOEVER*), or none to part of it (*Re Jackson and Haden* [1905] 1 Ch. 603; affirmed in CA [1906] 1 Ch. 412, applying *Re Deighton and Harris* [1898] 1 Ch. 458, cited *RELATING*, and *Nelthorpe v Holgate*, 1 Coll. 203). Cp. *Re Hucklesby and Atkinson*, 54 S.J. 342; *Proctor v Pugh* [1921] 2 Ch. 256. See further *UNWILLING*. Where there has been a misrepresentation of the property, see *Holliwell v Seacombe* [1906] 1 Ch. 426; *Re Simpson and May*, 53 S.J. 376; *Merrett v Schuster* [1920] 2 Ch. 240.

As to conditions prohibiting objections, see *INVESTIGATING*; *Spratt v Jeffery*, 10 B. & C. 249, below.

A direction that goods bequeathed are “to be enjoyed with and go with the title” of real or leasehold property, will not create an executed or executory trust, or cut down the legatee’s interest in the goods to a life estate (*Re Johnson*, 26 Ch. D. 538, in which case were cited the previous cases on the construction of a gift of chattels to go with a title). See *HEIRLOOM*.

“Title accepted”, “will not inquire into” title: see *Spratt v Jeffery*, 10 B. & C. 249. See also *INVESTIGATION*.

“Title” did not come “in question”, within County Courts Act 1888 (c.43) ss.56, 60, where the claim arose in respect of the possession of a *HEREDITAMENT* the right to which possession was not seriously disputed, e.g. an ordinary action of trespass (*Hawkins v Rutter* [1892] 1 Q.B. 668); *secus*, when so disputed (*Howorth v Sutcliffe* [1895] 2 Q.B. 358). The title to the land was not “in question” in an action for rent charge issuing out of such land (*Bassano v Bradley* [1896] 1 Q.B. 645).

When “title to any corporeal or incorporeal hereditament shall have come in *QUESTION*” (County Courts Act 1888 (c.43) s.120), there was an absolute right of appeal irrespective of value (*Millett v Ballard* [1904] 2 K.B. 593, cited *EJECTMENT*).

In any case of assault or battery “in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom”, the justices’ jurisdiction was ousted (Offences Against the Person Act 1861 (c.100) s.46); there, “title” governed the whole of the succeeding words (per Channell J., *R. v French* [1902] 1 K.B. 637); it meant, where “title” was being asserted or denied, e.g. where the defendant, claiming the land to be his, was placing bricks thereon, in assertion of that claim, which the complainant tried to prevent (*R. v Pearson*, L.R. 5 Q.B. 237); *secus*, where two commoners quarrelled about the alleged improper use of the common by one of them (*R. v French*, above). Cp. *BONA FIDE*.

Covenants for title: As to the qualification of a vendor’s covenant implied by Conveyancing Act 1881 (c.41) s.7(1)(A): see *David v Sabin* [1893] 1 Ch. 523. See Law of Property Act 1925 (c.20) s.76(1).

As to the covenants for title implied by s.76 of the Law of Property Act 1925 (c.20), see *David v Sabin* [1893] 1 Ch. 523; *Turner v Moon* [1901] 2 Ch. 825, cited *CONVEY*; *Great Western Railway v Fisher* [1905] 1 Ch. 316; *Stoney v Eastbourne* [1927] 1 Ch. 367; *Eastwood v Ashton* [1915] A.C. 900. As to other covenants for title, see *FURTHER*

TITLE

ASSURANCE; INCUMBRANCE; QUIET ENJOYMENT. As to the construction of these covenants, see *Elph.*, Ch.30; PURCHASE FOR VALUE.

“Evidence of the title” to goods: see *Distillers Co v Inland Revenue Commissioners*, 36 Sc. L.R. 538, cited WARRANT.

“Title to toll”: see *Hunt v Great Northern Railway*, 20 L.J.Q.B. 349, cited TOLL.

“Formerly it was not so, but now the title of an Act of Parliament forms part, and a very important part, of the Act” (per Lindley M.R., *Fielden v Morley* [1899] 1 Ch. 1, cited PURSUANCE); see further *Att-Gen v Margate Pier Co* [1900] 1 Ch. 749, cited PUBLIC DUTY; *Jones v Shervington* [1908] 2 K.B. 539, cited SEALED; *London CC v Bermondsey Bioscope Co*, 80 L.J.K.B. 146, cited TERMS. But the title of an Act of Parliament will not necessarily restrict the meaning of the Act, e.g. Wills Act 1861 (c.114) s.3, is applicable to the will of an alien, although the title of the Act is “An Act to amend the Law with respect to Wills of Personal Estate made by British Subjects” (*Re Groos* [1904] P. 269). Cp. MARGINAL NOTES. See hereon 1 Bla. Com. 183. See SHORT TITLE.

“Title, addition, or description”: Stat. Def., for the Dentists Act 1878 (41 & 41 Vict., c.33), Medical Act 1886 (c.48) s.26. See further *Brown v Whitlock*, 67 J.P. 451, cited ADDITION.

“There can be in general no copyright in the title or name of a book” (per James L.J. and Jessel M.R., *Dicks v Yates*, 18 Ch. D. 93; see further *Hollinrake v Truswell* [1894] 3 Ch. 420, and *Maxwell v Hogg*, 2 Ch. 307, both cited COPYRIGHT; *Crotch v Arnold*, 54 S.J. 49); though the title or name may be a trade-mark (*Dicks v Yates*, 18 Ch. D. 76; on which case see *Mack v Peter*, L.R. 14 Eq. 431; *Kelly v Byles*, 13 Ch. D. 682), or the adoption of a title or a name may be a doubtful passing off; see *Licensed Victuallers Newspaper Co v Bingham*, 38 Ch. D. 139; *Outram v London Evening Newspaper*, 55 S.J. 255.

“Title of honour”: see DIGNITY; *Cowley v Cowley* [1900] P. 118, 305; [1901] A.C. 450; *Re Rivett-Carnac*, 30 Ch. D. 136, cited INCORPOREAL HEREDITAMENT.

Subject to this Act, where goods are sold by a person who is not their owner, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct, precluded from denying the seller’s authority to sell (Sale of Goods Act 1979 (c.54) s.21(1)).

The phrase “good marketable title” was not to be construed as a title free from all encumbrances, so that a solicitor who failed to inform the bank who had promised a loan to the purchaser that there was a right of way over the land was not in breach of contract (*Barclays Bank Plc v Weeks Legg & Dean*, *The Times*, February 28, 1996).

“Slander of title”: see SLANDER; TRADE LIBEL.

“Bad title”: see BAD. Cp. GOOD TITLE.

Title “accrued”: see ACCRUE.

Title “to be approved”: see SUBJECT TO.

See ABSTRACT; BEST TITLE; DEDUCE; DEMISE; POSSESSORY; PRETENCED. See further PASSIVE; PREPARE; ROOT.

TITLE DEEDS. For a warning about the imprecision of the term “title deeds” and the consequent constraints on its use for most legal purposes see *R. (Stevens) v Truro Magistrates’ Court* [2002] 1 W.L.R. 144, Q.B.D.

TO. Where a verb of obligation is put in the infinitive mood—e.g. the tenant “to paint” once every fifth year—an agreement, or covenant, would obviously be created.

“To”, or its equivalent “unto”, or “from”, a time or place, generally but not necessarily, excludes the time or place mentioned (*Halsey's Case*, Latch, 183; *R. v Gamlingay*, 3 T.R. 513; but see on this last case *R. v Knight*, 7 B. & C. 413). See further FROM; cp. UNTIL.

“To” wills often mean “towards”. The plaintiff effected a marine policy, subject to rules one of which was that ships were not to sail from any port on the east coast of Great Britain “to” any port in the Belts between December 20 and February 15. The plaintiff's vessel sailed on February 8 for a port in the Belts, and was lost; held, that the rule in question was a warranty and not an exception; and that the word “to” in the rule meant “towards” and not “arriving at” (*Colledge v Harty*, 6 Ex. 205).

“To or towards”: see *R. v M'Carthy* [1903] 2 Ir. R. 156, cited INTIMIDATE.

Revocation of every gift “to, or for the benefit of” A: see *Re Whitehorne* [1906] 2 Ch. 121, cited REVOKE.

Injury “to” a thing: see *Burger v Indemnity, etc. Assurance* [1900] 2 Q.B. 348, cited IN RESPECT OF.

TO AND AMONGST. See AMONG.

TO AND FROM. See *Callard v Beeney* [1930] 1 K.B. 353, cited RIGHT OF WAY.

An education authority's liability to pay for or provide “transport to and from the school” under s.39 of the Education Act 1944 (c.31) is not fulfilled by providing or paying for transport to within three miles of the school. “To and from the school” means from and to the child's home to and from the school (*Surrey CC v Ministry of Education* [1953] 1 W.L.R. 516).

TO ARRIVE. See ARRIVE.

TO BE. This phrase is one of futurity, and may (1) create a covenant, (2) impose a qualification of, or conditions precedent to, a covenant, or (3) imply a stipulation, or (4) go to define the condition of a gift, or of a state of things, or (5) even amount to a grant.

When a clause in a deed prescribing something to be done or permitted, is introduced by “to be”, or a participle, the effect, speaking generally, is to create a covenant on the part of the person by whom the thing is to be done or permitted, or to impose a condition precedent on, or a qualification of, some covenant in the deed. The context determines which of these meanings is to prevail. Thus, where rent is “to be paid” (*Bower v Hodges*, 22 L.J.C.P. 194), or if the ordinary words at the commencement of the reddendum of a lease—“yielding and paying”—are used (Elph. 419, 420, 464–466; Touch. 162; *Sear v House Property Co*, 16 Ch. D. 387), a covenant to pay is created. But where a tenant covenants to repair, he “to be allowed” or the lessor “allowing” necessary timber, such latter clause prescribes a condition precedent, or qualification, of the covenant to repair (*Thomas v Cadwallader*, Willes, 496; see further Elph. 420, 421, 464–466 (Woodf. (24th edn), 525 et seq.).

The ad valorem stamp duty on a conveyance on sale, subject to a mortgage, was chargeable, not only on the purchase money, but also on the mortgage debt if it was “to be afterwards paid by the purchaser” (Stamp Act 1815 (c.184) Sch.); that meant, cases where it was “stipulated” that the purchaser should pay it (*Chandos v Inland Revenue Commissioners*, 6 Ex. 464). To remedy that ruling see Stamp Act 1852 (c.59) s.10; Stamp Act 1870 (c.97) s.73; Stamp Act 1891 (c.39) s.57, on which see *Mortimore v Inland Revenue Commissioners*, 33 L.J. Ex. 263, and *Swayne v Inland Revenue Commissioners* [1900] 1 Q.B. 172, both cited SUBJECT TO.

A condition of a gift is prescribed by “to be” in such a phrase as TO BE BORN.

See NOT TO BE; GIVEN; SUPPLIED.

TO BE BORN. The ordinary primary legal meaning of “to be born”, or “to be begotten”, includes past as well as future children (*Doe d. James v Hallett*, 1 M. & S. 124; cp. TO BE PASSED), and the introduction of the word “hereafter” does not alter that rule of construction (per Chatterton V.C., *Harrison v Harrison*, Ir. Rep. 10 Eq. 296). That construction, however, may by a context give way to the ordinary meaning of the English language whereby those phrases express futurity (per Fry L.J., *Locke v Dunlop*, 39 Ch. D. 387). That case was an instance in which the latter construction was adopted.

“Gifts to, or trusts for, children ‘to be born’, or ‘to be begotten’, include those already born or begotten; and *e contra*” (Elph. 328; see also 236).

In class gifts to children “to be born”, or “to be begotten”, “the established rule is that if the gift be immediate, so that it would, but for the words in question, have been confined to children (if any) existing at the testator’s death, they will have the effect of extending it to ‘all’ the children who shall ever come into existence; since in order to give the words in question *some* operation, the gift is necessarily made to comprehend the whole” (3 Jarm. (8th edn), 1689, 1690).

“This rule of construction, however, does not apply to general pecuniary legacies, where the effect of letting in children born after the death of the testator would be to postpone the distribution of the general estate (out of which the legacies are payable), until the death of the parent of the legatees” (3 Jarm., 1690).

“It seems to be established, too, that the expression children *to be born*, or *to be begotten*, when occurring in a gift, under which *some* class of children born after the death of the testator would, independently of this expression of futurity, be entitled, so that the words may be satisfied without departing from the ordinary construction, that construction is unaffected by them” (3 Jarm., 1692).

“It has been decided, too, that the words ‘which shall be begotten’, or ‘to be begotten’, annexed to the description of children or issue, do not *confine* the devise to future children; but that the description will, notwithstanding these words, include the children or issue in existence before the making of the will”; “and it seems that even the words ‘*hereafter* to be born’ will not exclude previously-born issue” (3 Jarm., 1693).

In *Gilbert v Boorman* (11 Ves. 238), Grant M.R. held that a gift of residue to A “and all the other children ‘hereafter’ to be born” of B, on attaining 21, excluded all children born after one of them had attained 21.

See BORN; HATH; MAY BE; THEREAFTER TO BE BORN; WHEN.

TO BE CANCELLED. Charterparty “to be cancelled” in certain events: see *Adamson v Newcastle Steamship Insurance*, 4 Q.B.D. 462.

See CANCEL.

TO BE DONE. “Matter or thing done, or to be done”, in the United Kingdom (Stamp Act 1891 (c.39) s.14(4)): see *Inland Revenue Commissioners v Maple* [1906] 1 K.B. 591; [1906] 2 K.B. 834, cited DONE, but the decisions in that case of Walton J., and of the Court of Appeal, were reversed by House of Lords [1908] A.C. 22.

TO BE ENTAILED. See *Jervoise v Northumberland*, 1 Jac. & W. 559; TO BE SETTLED; SETTLE; COURSE.

TO BE HELD. “To be held and enjoyed accordingly”: see *Re Harcourt, Portman v Portman* [1922] 2 A.C. 473, cited HEIR. See also TO GO AND BE HELD.

TO BE LET. See LET.

TO BE PAID. This phrase, in an agreement inter partes, creates a covenant to pay (*Bower v Hodges*, 22 L.J.C.P. 194).

In a will it is generally synonymous with payable; see further 2 Jarm (8th edn) 1345. In *Martineau v Rogers* (25 L.J. Ch. 398), “to be paid” was construed “VESTED”.

A direction that a legacy to a married woman is “to be paid” to her, nullifies a restraint on alienation (*Re Fearon*, 45 W.R. 232, applying *Re Bown*, 27 Ch. D. 411). So the restraint is gone when the legatee becomes entitled to payment (*Re Holmes*, 67 L.T. 335; *Re Bankes* [1902] 2 Ch. 333; *Russell v Lawder* [1904] 1 Ir. R. 328); so, where the direction is “to raise and pay”; *secus*, where the legacy is “to be held upon trust” for the married woman (*Re Grey*, 34 Ch. D. 712).

See PAID.

TO BE PASSED. “Any Act ‘to be’ passed in the present session of Parliament”, semble, means the same as “any Act ‘passed’ in the present session”; for “the session is a thing of continuity; therefore, when the legislature speak of any Act ‘to be’ passed in that session, they mean any Act that shall be passed from the commencement to the conclusion of the session, embracing both the past and future portions of it” (per Ellenborough C.J., *Nares v Rowles*, 14 East, 518). Cp. PASSING; TO BE BORN.

TO BEARER. See BEARER.

TO CEASE. “To cease on return to England”—for the meaning of these words in respect of an annuity, see *Orpen v Moriarty* [1912] 1 Ir. R. 485.

TO DO WITH THE ALLEGED FACTS OF THE OFFENCE. The exclusion under s.98 of the Criminal Justice Act 2003 of evidence which has “to do with the alleged facts of the offence” from the definition of bad character refers to evidence of conduct having some temporal connection with the instant offence (*R. v Tirnaveanu* [2007] EWCA Crim 1239).

TO GO AND BE HELD. “To go and be held” with settled realty (heirlooms); see *Re Beresford Hope* [1917] 1 Ch. 287. See also TO BE HELD.

TO OR FOR. (Social Security Administration Act 1992 (c.5) s.82(1).) Benefit paid to the victim was not limited to that part of the benefit for the claimant’s support but included those parts which were calculated for the support of his wife and children (*Hassall v Secretary of State for Social Security* [1995] 3 All E.R. 909).

TO OR FROM. See INTO.

TO ORDER. If a warehouseman gives a warrant of goods to be held “to order” of A, and, without getting the warrant, delivers the goods at A’s request to someone other than the holder of the warrant, the warehouseman will be responsible for the goods to the innocent holder for value of the warrant (*London & County Bank v Fulford*, 2 T.L.R. 703).

See ORDER; NEGOTIABLE.

TO THE BEST OF THEIR JUDGMENT. In establishing a reasonable basis for the assessment of VAT in default of proper returns, the Customs and Excise Commissioners were held to have satisfied their duty to act “to the best of their judgment” for the purposes of s.31(1) of the Finance Act 1972 (c.41) by inspecting the taxpayer’s books and noting takings during a “test” period (*Van Boeckel v Customs and Excise Commissioners* [1981] 2 All E.R. 505).

TO THE EFFECT. See IN THE FORM; TENOR.

TO THE EXTENT. A guarantee for goods “to the extent of” a specified sum means “not exceeding” that sum, and does not fix the sum as the minimum of the supply of goods (*Dimmock v Sturla*, 15 L.J. Ex. 65).

TO THE USE. See *Savill v Bethell* [1902] 2 Ch. 523, cited USE.

TO THE VALUE. See *Lavell v Ritchings* [1906] 1 K.B. 480, cited TOOL.

TOBACCO. Premises used for the business of a tea-shop at which cigarettes were sold at the cashier's desk were held not to be "used for the business of the sale of tobacco, cigars and cigarettes" within a covenant in a lease (*A. Lewis & Co (Westminster) Ltd v Bell Property Trust Ltd* [1940] Ch. 345).

"Tobacco", "tobacco dealer", "tobacco manufacturer", "tobacco refuse", "tobacco products": Stat. Def., Customs and Excise Act 1952 (c.44) s.307; Finance Act 1976 (c.40) s.4; Tobacco Products Duty Act 1979 (c.7) s.1(1).

"Stripped tobacco": see STRIP.

"Tobacco works": see NON-TEXTILE FACTORIES.

"Fit for sale": see FIT FOR.

TOBACCO ADVERTISEMENT. Stat. Def., "means an advertisement—(a) whose purpose is to promote a tobacco product, or (b) whose effect is to do so" (s.1 of the Tobacco Advertising and Promotion Act 2002 (c.36)).

TOBACCO PRODUCT. Stat. Def., "means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed" (s.1 of the Tobacco Advertising and Promotion Act 2002 (c.36)).

TOFT. "'Toft' is a place wherein a house once stood, but it is now all fallen, or puld downe" (Termes de la Ley): see further *Hill v Grange*, Plowd. 170; *Skidmore v Boucheir*, 2 Show. 93; Cowel.

"Toft is the place where a house has been, and now there is none, and the site of the house can be seen, and by this name it will pass in a grant: 21 Edw. 4, 52, Pl. 15; Touch. 95. Spelman says that the house must have been in the country" (Elph. 622).

"Tofts of ground remaining unbuilt" (Act for the relief of certain Incumbents living in the City of London (44 Geo. 3, c. lxxxix) s.13) included the sites of premises demolished by enemy action which were standing waste and unoccupied (*City of London Brewery & Investment Trust v Allhallows Churchwardens*, 97 L.J. 107).

TOGETHER. As to treatment of a man and woman together see *Re D* [2005] UKHL 33.

"The accommodation offered by Camden to the appellant comprised two self-contained flats, on the same floor of the building, but a short distance apart, one of which was offered for occupation by the appellant and her sister and the other by her father. On any ordinary use of language, that was not the provision of accommodation which the appellant and her father were to occupy 'together with' one another. They would be living close by each other, but separate from one another. No one could reasonably describe them, in such circumstances, as living 'together with' one another. That ordinary meaning of the legislative language is reflected in the wording of section 176(a) which refers to a 'person who normally resides with' the applicant. It seems reasonable to suppose that concepts of occupation by the applicant 'together with' another, and residence of the applicant 'with' that other, were intended by Parliament to have a similar meaning. It cannot be said, on any ordinary use of language, that persons living in separate self-contained flats, however close, and not sharing any communal area, are residing together." (*A.S. v London Borough of Camden* [2011] EWCA Civ 463.)

See also TREATMENT TOGETHER.

TOGETHER WITH. This phrase does not mean "and also", but "at the same time as"; therefore, a bill of sale and its affidavit must be registered simultaneously

(*Grindell v Brendon*, 28 L.J.C.P. 333). See THEREWITH. Cp. per Lord Trayner, *Alexander's Trustees v Muir*, 40 Sc. L.R. 16, cited ALSO.

Devise of rent of A to C B for life and, after his death, the same rent "together with" testator's other rents to X Y; held, on review of the will, that "together with" did not incorporate the time when the gift of the other rents was to become operative, and that X Y took them, on the death of the testator (*Doe d. Annandale v Brazier*, 5 B. & Ald. 64).

"Together with its contents": a gift of a house together with its contents is one single gift, consequently the beneficiary cannot disclaim the gift of the house and accept the gift of the contents (*Re Joel* [1943] Ch. 311).

Testator's name "together with" devisee's own surname: see Name and Arms Clause, under NAME.

"Together receiving treatment services" (Human Fertilisation and Embryology Act 1990 (c.37) s.4 and Sch.3 para.5(1)). Once a donor had died, the use of his sperm in the course of providing treatment services to a woman could not be regarded as provided for the "woman and man together" within the meaning of s.4(1)(b) (*R. v Human and Fertilisation and Embryology Authority, Ex p. Blood* [1997] 2 W.L.R. 806).

"He submits that the use of the words 'together with' import a vital linkage between the indemnity which clause 13.1.1 is 'about' and the 'costs and expenses'. These words are, it is suggested, in themselves determinative of the proper construction of clause 13.1.1. He makes the point that the phrase appears at the end of the phrase and it would, he submits, be strange if a new free standing indemnity were to be buried at the end of such a lengthy clause. He referred me to both Stroud's Judicial Dictionary and Words and Phrases to support his submission that the words 'together with' mean 'in union with' or 'in company with'. . . . The crucial phrase at the end of clause 13.1.1 is 'together with any costs and expenses (including but not limited to professional fees) properly incurred which result from such failure'. The words 'such failure' plainly refer to the failure to perform the obligations under clause 7.1.7 of the Agreement. He submits that the words 'together with' show that the costs and expenses are not dependent upon the pre-existence of interest fines and/or penalties. . . . Whilst I accept that the words 'together with' can have the meaning ascribed to them by the Court of Appeal in *Joel v Rogerson*, I note that the OED definition of 'together with' is 'Along with; in combination with, in addition to, or with the addition of; in company or co-operation with; at the same time as, simultaneously with.' *Joel v Rogerson* was of course a very different case involving the construction of a provision in a will. I do not regard it as of very much assistance in determining the meaning of clause 13.1.1 of the Settlement Agreement. Mr Grant may be right in suggesting that there must be some link between the interest fine or penalty at the beginning of the clause and the costs and expenses at the end. Where I part company from his submission is that I do not accept that the link has to be as strong as an actual fine, assessment or penalty. To my mind it is sufficient if the costs and expenses are incurred in an effort to avoid such a fine."

"Occupied together with", see OCCUPY: OCCUPIED.

See WITH.

TOKEN. "Coin, token, or other article, used" as an instrument of gaming (Vagrant Act Amendment Act 1873 (c.38) s.3) semble, did not include betting slips given to a

TOLERATED

bookmaker by his customers for the purpose of wagering on a horse race (*Lester v Quested*, 85 L.T. 487, cited *GAME OF CHANCE*). See *BET*.

TOLERATED TRESPASSER. “A tolerated trespasser is an oxymoron. A trespasser is someone who should not be there. But tolerated trespassers were allowed to be there. Indeed, in some cases the local authority had no right to evict them. The Court of Appeal decided in *Harlow District Council v Hall* [2006] 1 WLR 2116 that if the order fixed a date for possession, but postponed its enforcement on terms, the tenancy came to an end on the date fixed, even if the trespasser complied with the terms. In other cases, the local authority had expressly agreed that the trespasser could stay. The House of Lords decided in *Burrows v Brent London Borough Council* [1996] 1 WLR 1448 that even a written agreement not to evict the trespasser if she complied with certain terms did not create a new tenancy. Even without such an agreement, the local authority were often quite uninterested in enforcing the order. They may not have realised that the order had been breached; they may have realised that the order had been breached but also that this was not the trespasser’s fault but the result of the way the housing benefit system worked; they may have obtained the order without any intention of actually evicting the trespasser, but in order to obtain a money judgment and encourage more punctual payment of what both still regarded as rent; and they may not have wanted to have to rehouse a trespasser, who was by definition homeless, if she was in priority need. These were not people whom the local authority were reluctant to have there and were waiting for the machinery of eviction to take its course. These were people whom the authority wanted to have there, provided that they could be persuaded to pay most, if not all, of their rent. . . . All of this nonsense could have been avoided if a different construction had been put upon section 82(2) of the Housing Act 1985. The whole edifice was built upon the extempore judgment of a two judge Court of Appeal in *Thompson*. Section 82(1), so far as is material, provides that a secure tenancy ‘cannot be brought to an end by the landlord except by obtaining an order of the court for the possession of the dwelling house . . .’. This does not affect the ways in which the tenancy may be brought to an end by the tenant or by agreement between the landlord and the tenant. But it does mean that the landlord cannot end the tenancy without getting a possession order. Section 82(2) then provided that ‘where the landlord obtains an order for the possession of the dwelling-house, the tenancy ends on the date on which the tenant is to give up possession in pursuance of the order’.” (*Austin v Mayor and Burgesses of the London Borough of Southwark* [2010] UKSC 28.)

TOLERATION ACT. Toleration Act 1688 (c.18), confirmed by 10 Anne, c.2; see hereon *PUBLIC ACT OF PARLIAMENT*.

TOLL. “Toll”, or *tolnetum* (or *thoelonio*), is a sum of money which is taken in respect of some benefit (per Bramwell and Willes, arg., citing *Com. Dig. Toll, Adey v Trinity House*, 22 L.J.Q.B. 3)—the benefit being the temporary use of land—e.g. fair or market tolls, toll thorough, toll traverse, anchorage toll, and harbour tolls (*Mayor of Exeter v Warren*, 5 Q.B. 773; *The London Wharves*, 1 Bl. W. 581). Therefore, harbour rates (under a private Act) are “tolls” (*Adey v Trinity House*, 22 L.J.Q.B. 3); but payments to a railway company for the use of locomotive power, as distinguished from the use of their railway, are not (*Hunt v Great Northern Railway*, 20 L.J.Q.B. 349).

“As regards tolls for passing over land, the passage in 2 Rol. Ab. 171 D, and in 16 Vin. Ab. (2nd edn), 577 D (a), is a very strong authority against the right to take them, in the absence of a grant from the Crown” (per Lord Lindley, *Simpson v Att-Gen* [1904] A.C. 509).

Semble, the proper sense of the word “toll”, as applied to a railway, is a payment in respect of the use of the railway itself—the person paying the toll being himself the carrier of the goods or persons along the railway (*Wallis v London & South Western Railway*, L.R. 5 Ex. 62; *Brown v Great Western Railway*, 9 Q.B.D. 744; *North Central Wagon Co v Manchester, Sheffield & Lincolnshire Railway*, 32 Ch. D. 477; 35 Ch. D. 191; 13 App. Cas. 554), and those cases show that that was the meaning of the word as used in ss.95–97, Railways Clauses Consolidation Act 1845 (c.20). A railway company’s carrier charge is therefore not a toll: see lastly cited cases and *Gorton v Bristol & Exeter Railway*, 30 L.J.Q.B. 273, and *Pryce v Monmouth Railway*, 4 App. Cas. 197, for distinction between “charges” and “tolls”. “Tolls” in s.90, semble, applied to traffic generally, and was not limited to tolls strictly so called (*Evershed v London & North Western Railway*, 3 Q.B.D. 134; 3 App. Cas. 1029); but (per Bramwell L.J., in this last case), the “word does not include a charge for cartage or collection; it only includes charges for receiving upon transit along, and delivery from, the railway, of the goods entrusted to the company” (47 L.J.Q.B. 285). “Tolls” in s.87 of the Railways Clauses Consolidation Act, above: see *Simpson v Denison*, 10 Hare, 60; *Great Northern Railway v South Yorkshire Railway*, 9 Ex. 644.

“Tolls”, in ss.98 and 99 of the Railways Clauses Consolidation Act 1845, above, was used in its wider sense, and included rates and charges for goods carried by a railway company in their own carriages or trucks (*Moreing v London & North Western Railway* [1905] 2 K.B. 113, cited ON DEMAND).

“Tolls” (Regulation of Railways Act 1873 (c.48) s.11) was not to be restricted to tolls payable according to a mileage scale or specified to be maximum tolls, but included tolls levied for the use of a railway or canal (*Warwick & Birmingham Canal Navigation v Birmingham Canal Navigation*, 3 Ry. & Can. Traffic Cas. 113).

Tolls, as regards fairs and markets: see *Casewell v Cook*, 31 L.J.M.C. 185; see on this case *Londonderry v M’Elahinney*, Ir. Rep. 9 C.L. 61.

Tolls are not incident of common right to a fair or market. Accordingly, there must be found some subsidiary grant of the right to take tolls by express mention. The amount of the tolls need not be specified in the grant, and in the absence of specific mention of an amount, the right will be to take tolls of a reasonable amount. The right to take tolls may be established by prescription. At common law, tolls for goods sold in a fair or market are due from the buyers and not from the sellers; but from time to time successful attempts have been made to establish a right to take tolls from sellers (*Att-Gen v Colchester Corp* [1952] Ch. 586).

Stallage may pass under the word “toll” (*Bennington v Taylor*, 2 Lutw. E. ed. 1718, 642; *Hickman’s Case*, 2 Rol. Ab. 123; *Hill v Priour*, 2 Show. 34; *Lockwood v Wood*, 6 Q.B. 31).

“Tolls” (Land Tax Act 1797 (c.5) s.4): see *Charing Cross Bridge Co v Mitchell*, 24 L.J.Q.B. 249, cited by Swinfen Eady J., *Central London Railway v Land Tax Commissioners* [1911] 1 Ch. 467, cited LAND TAX COMMISSIONERS.

As to construction of an exemption from toll: see *Hill v Priour*, above. See hereon *Termes de la Ley*, *Tol* or *Tolne*; Cowel; Jacob.

TOLL

As to the forfeiture of the right to collect toll if the thing in respect of which it is granted is not properly maintained, see *Att-Gen v Simpson* [1901] 2 Ch. 671; in House of Lords, *nom. Simpson v Att-Gen* [1904] A.C. 476.

"Tolls . . . ferries . . . and other concerns of a like nature having profits" (Income Tax Act 1918 (c.40) Sch.A No.3 r.3): see *Inland Revenue Commissioners v Forth Conservancy Board*, 98 L.J.P.C. 34, affirmed 47 T.L.R. 429.

Stat. Def., Railway Clauses Consolidation Act 1845 (c.20) s.3.

Turnpike tolls: Stat. Def., Wales (Highways) Act 1844 (c.91) s.114. See TURNPIKE ROAD.

See CARRIAGE; CUSTOM; FAIR OR MARKET TOLLS; PASSAGE; RATE; RENTS AND TOLLS; WITH ALL LIBERTIES.

TOLL THOROUGH. Is a toll for passing along a public highway, whether the highway be a road, a river, a ferry, a bridge, or the sea, and it cannot be claimed by prescription, but must be supported (if at all) by a good consideration performed in respect of the precise locality where the toll is claimed, e.g. the reparation of "the" highway on which the toll is claimed (*Smith v Shepherd*, Cro. Eliz. 710; *Hill v Smith*, 4 Taunt. 520; see ANCHORAGE TOLL). See hereon *Brecon Markets Co v Neath & Brecon Railway*, L.R. 7 C.P. 555; 8 C.P. 157. Cp. TOLL TRAVERSE.

TOLL TRAVERSE. Is a toll payable for passing over the soil of another, or over soil which, though now a public highway, was once private, and which (as a matter of precise proof, or as a legal presumption) was dedicated subject to the toll. It can be claimed by prescription and, like a market toll, may vary in amount according to the varying value of money (*Pelham v Pickersgill* 1 T.R. 660; *Lawrence v Hitch* L.R. 3 Q.B. 521, cited by Stirling L.J., in *Att-Gen v Simpson* [1901] 2 Ch. 719, but see hereon per Lord Macnaghten *Simpson v Att-Gen* [1905] A.C. 488, and per Lord Lindley, *ibid.* 510). See hereon *Brecon Markets Co v Neath & Brecon Railway* L.R. 7 C.P. 555, cited TOLL THOROUGH; and on the difference between toll thorough and toll traverse, see *R. v Salisbury* 8 A. & E. 716.

Cp. MODUS.

TO-MORROW. See *Duncan v Topham*, 18 L.J.C.P. 310.

TON. A contract for the sale of goods by "the ton, long weight", was goods, as "the ton, long weight", though it consisted of 240,000 lb avoirdupois and was more than 20 cwt. statutory measure, was yet a multiple of the standard pound, within s.9 of the Weights and Measures Act 1824 (c.74) (*Giles v Jones*, 11 Ex. 393). See MULTIPLE.

Stat. Def., Mineral Workings Act 1951 (c.60) s.41(1); Weights and Measures Act 1963 (c.31) Sch.1 Pt V.

"Tons register": Stat. Def., Customs and Excise Management Act 1979 (c.2) s.1.

"Tons burden": see BURDEN.

TONIC. A tonic operates in the same way as a medicine. It aims at restoring healthy functioning (*Nairne v Stephen Smith & Co* [1943] 1 K.B. 17).

TONNAGE. Tonnage was "a custome or impost paid to the King for merchandise carried out, or brought in ships, or such like vessels, according to a certain rate upon every tun" (Cowel).

"Tonnage in coal" (Coal Mines Act 1930 (c.37) s.18(1)) meant tonnage in coal as it came out of the pit in the tubs before any dirt was picked, screened, washed or otherwise taken out of the coal (*Re Midland (Amalgamated) District (Coal Mines) Scheme*, 152 L.T. 212).

See GROSS; REGISTER.

TOO NEAR. No.20 of the River Tyne Bye-Laws 1884, without laying down a hard-and-fast rule, means that the incoming vessel is not to come in “too near”, i.e. that she must give room enough, and “she must not run up so close as only to leave just room” (per Esher M.R., *The John O'Scott* [1897] P. 64, interpreting *The Harvest*, 11 P.D. 90).

TOOK. See TAKE.

TOOL. What were “tools” or “implements” of trade within, e.g. s.44(2) of the Bankruptcy Act 1883 (c.52), was a question of fact in each case; “books, or even desks, would be implements of trade of a teacher of languages” (per Macdonald L.J.C., *Macpherson v Drummond*, 43 Sc. L.R. 102); see Bankruptcy Act 1914 (c.59) s.38; *Re Sherman*, 32 T.L.R. 231.

“Tools and implements of his trade to the value of 5” (County Courts Act 1888 (c.43) s.147 (which was also applicable to s.4 of the Law of Distress Amendment Act 1888 (c.21)) included the sewing machine of a sempstress (*Churchward v Johnson*, 54 J.P. 326), and the hired cab of a cab-driver (*Lavell v Ritchings* [1906] 1 K.B. 480); and if such a chattel was the only one on the premises belonging to the execution-debtor, the exemption extended to it though its value was much in excess of £5—“to the value of £5” meant that excepted articles to “at least” that value had to be left on the premises (per Alverstone C.J., *Lavell v Ritchings*; *Boyd v Bilham* [1909] 1 K.B. 14; *MacGregor v Clamp* [1914] 1 K.B. 288).

Semble, a threshing machine is an implement of trade, within the conditional exemption from distress (*Fenton v Logan*, 2 L.J.C.P. 102; *Gonsky v Durrell* [1918] 2 K.B. 288). Cp. PUBLIC TRADE.

Safety lamps used in mines were “tools” within s.7(3) of the Conspiracy and Protection of Property Act 1875 (c.86): see *Fowler v Kibble* [1922] 1 Ch. 487.

See MACHINE; MATERIALS.

TOP. See LOP.

TOPMOST STOREY. See STOREY.

TORRA. “Torra”, or “tor”, a mount or hill (Jacob).

TORRENS' ACT. Artizans and Labourers Dwellings Act 1868 (c.130).

TORT. To constitute a joint tort there must be one *damnum* and one *injuria*: see *The Kursk* [1924] P. 140; *Brooke v Bool*, 97 L.J.K.B. 511.

“Action founded on tort”. An action for damages for an infringement of Community rights contrary to s.2 of the European Communities Act 1972 was an action for breach of statutory duty and therefore was an “action founded on tort” for the purposes of s.2 of the Limitation Act 1980. Without express definition, “action founded on tort” should be construed to include any claim in respect of the breach of a non-contractual duty which gave a private law right to recover compensatory damages at common law, whether by reference to Community obligations or domestic obligations (*R. v Secretary of State for Transport, Ex p. Factortame Ltd (No.7)* [2001] 1 W.L.R. 942, Q.B.D.).

Stat. Def., including a reference to reparation in relation to Scotland, Equality Act 2006 s.68(5)(b).

See CLAIM FOUNDED IN TORT.

Executor “de son tort”: see EXECUTOR.

Cp. MISFEASANCE.

TORTURE

TORTURE. “Torture is a strong word. In human rights instruments only deliberate inhuman treatment causing very serious and cruel suffering ranks as torture.” (*R. (Sivakumar) v Secretary of State for the Home Department* [2003] 1 W.L.R. 840 at 845, HL.)

For recent considerations as to the meaning of “torture”, see European Human Rights Law Review [2006] pp.117–128.

TOTAL. “Total number of hours which are not concurrent” (Powers of Criminal Courts Act 1973 (c.62) s.14(3)) means the total number of hours ordered, not the total number of hours left to serve (*R. v Anderson* [1990] Crim. L.R. 130).

TOTAL DENIAL. As to what amounts to a total denial of the Convention right to a fair trial, see *R.B. (Algeria) v Secretary of State for the Home Department* [2009] UKHL 10.

TOTAL INCOME. A taxpayer’s “total income” for the purposes of the proviso to s.27(2) of the Income and Corporation Taxes Act 1970 (c.10) was held not to include his wife’s overseas income not chargeable to United Kingdom tax (*IRC v Addison* [1984] 1 W.L.R. 1264).

Stat. Def., Income Tax Act 1952 (c.10) s.524; Income and Corporation Taxes Act 1970 (c.10) s.528(1). See INCOME.

TOTAL LOSS. As regards a marine insurance, “the ‘total loss’ of the thing insured is the absolute destruction of it by the wreck of the ship” (per Mansfield C.J., *Cocking v Fraser*; Park, 247, cited SPECIE, which see further).

“Since the days of *Davy v Milford* (15 East, 559, on which case see *Janson v Ralli* 25 L.J.Q.B. 300), it seems that the expression ‘total loss’ is an ambiguous one; it may mean a total loss of the whole subject-matter of insurance, or a total loss of part” (per Byles J., *Wilkinson v Hyde*, 27 L.J.C.P. 120).

A total loss is either (1) actual, or (2) constructive—“actual” when the subject-matter of insurance is either wholly destroyed, or so damaged that it would be impracticable to repair the injury (*Moss v Smith*, 9 C.B. 103); “constructive”, when the subject-matter, although still in existence, is either actually lost “to the owners”, or beneficially lost to them and notice of abandonment has been given to the underwriters. As regards a policy, there is a constructive total loss when the ship goes to the bottom of the sea, though the underwriters may, by mechanical skill and appliances, bring her up again (*The Blairmore* [1898] A.C. 593).

“A constructive total loss is as much a total loss as an actual total loss, and consequently, unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss. ‘A constructive total loss in insurance law is that which entitles the insured to claim the whole amount of the insurance, on giving due notice of abandonment’ (Arn. (13th ed.) s.1091). The notice of abandonment is a necessary preliminary to a claim for a constructive total loss The notice of abandonment is an offer made by the shipowner to the underwriter to vest the property in the ship in the underwriter, so that he may deal with it as his own. Without such an offer the underwriter cannot deal with the ship as his own; it remains the shipowner’s property; and such a position is inconsistent with the existence of a claim for a constructive total loss” (per Bigham J., *Western Assurance v Poole* [1903] 1 K.B. 383, 384); but notice of abandonment to the original insurers suffices, and if so given, need not be given to the re-insurers (*Uzielli v Boston Insurance*, 15 Q.B.D. 11, cited SUE AND LABOUR; *Cates Tug, etc. Co v Franklin Insurance* [1927] A.C. 698).

In determining whether the assured has a right to abandon a vessel as a constructive total loss, the prudent uninsured owner test—i.e. whether such an owner would repair her having regard to all the circumstances—is the guide, and, in estimating whether there has been a constructive total loss, the assured is entitled to add the damaged value of the vessel to the cost of her repair (*Macbeth v Maritime Insurance* [1908] A.C. 144, overruling *Angel v Merchants' Marine Insurance* [1903] 1 K.B. 811; *Polurrian SS Co v Young* [1915] 1 K.B. 922). See further ABANDONMENT; *Mansell v Hoade*, 20 T.L.R. 150; *North Atlantic SS Co v Burr*, 20 T.L.R. 266; *Moore v Evans* [1918] A.C. 185.

The total loss of a ship by abandonment cannot be converted into partial loss by recapture or restoration “after” action brought (*Ruys v Royal Exchange Assurance* [1897] 2 Q.B. 135). See also *Woodall v Clifton* [1905] 2 Ch. 257, cited PERPETUITY.

So it has been held that partial loss cannot be recovered under a policy against constructive total loss (*Marten v Steamship Owners' Underwriting Association*, 71 L.J.K.B. 718; *Western Assurance v Poole*, above, considering *Uzielli v Boston Insurance*, above); but see s.56(4) of the Marine Insurance Act 1906 (c.41).

A policy against total loss of vessel and freight does not become payable by the vessel becoming a constructive total loss if (e.g. by Italian law governing the policy) a pro rata freight was, in the circumstances, payable, for then there would not be a total loss of the freight (*Price v Maritime Insurance* [1901] 2 K.B. 412).

On what is a total loss of freight, see *Guthrie v North China Insurance*, 7 Com. Cas. 130.

That the word “only”, in a policy against total loss or constructive total loss, does not operate to strike out the sue and labour clause, see per Kennedy J., *Crouan v Stanier* [1904] 1 K.B. 89.

See also *Cunningham v Maritime Insurance* [1899] 2 I.R. 257; *Cossmann v West*, 13 App. Cas. 160; *Allen v Sugrue*, 8 B. & C. 561; *Adams v Mackenzie*, 32 L.J.C.P. 92; Arn. (13th edn), Pt 3 Ch.28.

Value of ship, how ascertained as regards a constructive total loss: see *Henderson v Shankland* [1896] 1 Q.B. 525, approving the dictum in Arnold (13th edn) s.1024, that “new for old” allowance is not applicable where no repairs are done.

Where brass plated steelcord was so badly damaged in transit that it was returned to the consignor for its scrap value, there was a “total loss” within the meaning of art.32(1) of the Schedule of the Carriage of Goods by Road Act 1965 (c.37); there being no delivery of the goods (*Worldwide Carriers v Ardtran* [1983] 1 All E.R. 692).

Stat. Def., “actual total loss”, and “partial loss”, ss.56–58 of the Marine Insurance Act 1906 (c.41); “constructive total loss”, ss.60, 61; “notice of abandonment”, s.62; effect of abandonment, s.63.

See CASTAWAY; LOSS; PARTIAL LOSS; SPECIE.

Cp. “wholly disabled”, under WHOLLY.

“Total loss”: see SALVAGE.

As regards bottomry bond, see LOSS.

TOTAL PROFITS. Stat. Def., Corporation Tax Act 2010 s.1119.

TOTAL TAXABLE PROFITS. In ordinary usage, capital allowances are to be deducted before arriving at a person's total taxable profits (*Smith v Smith* [2004] EWCA Civ 1318).

TOTALISATOR

TOTALISATOR. The ordinary totalisator is a method of procuring betting or enabling betting to be carried out, in such a way that the mathematically correct odds are always given (per Lord Greene M.R., *Elderton v United Kingdom Totalisator Co Ltd* [1946] Ch. 57, 63).

“Totalisator”; “Totalisator board”: Stat. Def., Betting, Gaming and Lotteries Act 1963 (c.2) s.55(1).

“Totalisator odds”: Stat. Def., Finance Act 1952 (c.33) s.4.

TOTALLY WITHOUT MERIT. For discussion of the meaning of this phrase in the context of certification of an application for permission to apply to judicial review see *Wasif v The Secretary of State for the Home Department* [2016] EWCA Civ 82.

TOTE CLUB. As to the legality of tote clubs, see *Shuttleworth v Leeds Greyhound Association Ltd* [1933] 1 K.B. 400; *Streatham Cinemas Ltd v John McClaghlan Ltd* [1933] 2 K.B. 331.

TOTIES QUOTIES. “As often as” (Cowel). See AS OFTEN AS; FROM TIME TO TIME; QUAMDIU.

TOUCH. As to the meaning of a covenant “touching the land”: see per Charles J., *Fleetwood v Hull*, 23 Q.B.D. 35, approved by Lindley L.J., *White v Southend Hotel Co* [1897] 1 Ch. 767; see further RUN WITH THE LAND.

An arbitration clause that all disputes, etc. “touching these presents, or any clause matter or thing herein contained, or the construction thereof”: held, to include not only the construction of the document itself, but also the question whether the acts complained of were or were not within the matters referred to arbitration (*Willesford v Watson*, 8 Ch. 478; but see on this case *Piercy v Young*, 14 Ch. D. 200; see both cases cited in the judgment in *De Ricci v De Ricci* [1891] P. 378).

“Touch and concern”. A covenant restricting building operations on a small plot of land was held not to “touch and concern” a neighbouring estate of 1,700 acres for whose benefit it had been expressed to be taken. Therefore the benefit was held not to run with any part of that estate (*Re Ballard’s Conveyance* [1937] Ch. 473); and see *Zetland (Marquis) v Driver* [1939] Ch. 1. See also HAVING.

A covenant by a surety to accept a lease replacing a lease disclaimed on behalf of an insolvent tenant “touched and concerned the land” demised, so that the benefit of the covenant ran with the reversion and did not have to be expressly assigned (*Coronation Street Industrial Properties v Ingall Industries* [1989] 1 W.L.R. 304).

“Touching the right”: see RIGHT.

Cp. AFFECT; AFFECTING.

TOUCH-AND-GO. See STRANDING.

TOUCHING. See SEXUAL TOUCHING.

TOUR. See EXCURSION OR TOUR.

TOURNE. See TURN.

TOUT. In a libel action (June 13, 1893), Day J. said that “the true meaning of the word ‘tout’ is simply a person who obtains business by solicitation; and not, necessarily, a swindler, though no doubt he might combine the occupations” (37 S.J. 567). In *Asch v Financial News (The Times)*, June 13, 1893) a jury found the word not libellous.

TOW. A tug towing a vessel under-way, though having her anchor on the ground yet not held thereby, must carry towing lights as prescribed by art.3, Regulations for Preventing Collisions at Sea 1897 (*The Romance*, 83 L.T. 483, cited AT ANCHOR).

If a tug and a tow "are so attached and are under such management and control that they move practically as one vessel, the tow is responsible for the action of the tug" (per Alverstone C.J., *The Devonian*, 70 L.J.P.D. & A. 74, stating effect of *M'Cowan v Baine* [1891] A.C. 401); in such a case they are a "ship" within s.419(4), Merchant Shipping Act 1894 (c.60), and if the tug is "in fault", within that provision, so also is the tow (*The Devonian* [1901] P. 221, which case see also as to "attached for the purpose of towing or manoeuvring" in Mersey Rules 1900 r.4(a)).

As to the duties and liabilities of, and between, tug and tow, see *The Adam W Spies*, 70 L.J.P.D. & A. 25, and cases therein referred to; *The Millwall (No.2)* [1905] P. 155; *The Harvest Home* [1905] P. 177; *The Hopper Barge and the Knight Errant*, 80 L.J.P. 22.

See LIBERTY TO TOW.

TOWAGE. "Towage, *towagium*", is the towing or drawing a ship or barge along the water by men or beasts on land, or by another ship or boat fastened to her" (Cowel). See TOWING-PATH.

"Without attempting any definition which may be universally applied, a towage service may be described as the employment of one vessel to expedite the voyage of another when nothing more is required than the accelerating her progress" (per Dr. Lushington, *The Princess Alice*, 3 Rob. W. 138; see further *The Charlotte*, 3 Rob. W. 71; *The Strathnaver*, 1 App. Cas. 58); and are not the subject of a maritime LIEN (*Westrup v Great Yarmouth Co*, 43 Ch. D. 241).

In another sense, towage is a shore-duty, "for the liberty of vessels up to the port" (Hale, *De Portibus Maris*, Ch.6); "also that money, or other recompence, which is given by bargemen to the owner of the ground next a river where they tow a barge, or other vessel" (Cowel).

A tug is performing "towage or assistance services" when she is manoeuvring into position to passing towing wires to the vessel to be towed (*The Baltyk* [1948] P. 1). See also *Glen Line v WJ Guy & Sons*, *The Glenaffric* [1948] P. 159, where a tug was "towing" within the United Kingdom Standard Towing Conditions when ready to receive orders from the ship to be towed.

"Whilst towing" (United Kingdom Standard Towage Conditions cl.1 and 3): as to when the condition excluding a tug-owner from liability for damage done by a tug "whilst towing" is fulfilled see *The Blenheim (Owners) v The Impetus (Owners)*, *The Impetus* [1959] P. 111. The fact that, before a tug was in position to obey an order to pick up a rope, it had to make a manoeuvre did not mean that it was not ready to receive that order or that, at the time, it was not "towing" within the meaning of cl.1 (*British Transport Docks Board v Apollon (Owners)* [1971] 2 All E.R. 1223). Where, after a tow rope had parted, the tug made an independent manoeuvre to avoid the risk of running aground occasioned by the parting of the rope, and fouled the rope with its propeller, the damage occurred "whilst towing" within the meaning of these clauses (*Australian Coastal Shipping Commission v Wyuna* (1964) 38 A.L.J.R. 321). See also *Howard Smith Industries v Melbourne Harbour Trust Commissioners* [1970] V.R. 406.

Stat. Def., County Courts Act 1959 (c.22) s.61.

TOWARDS. A bequest of an annuity to A, "towards the support of her children until they attain 21": held, merely descriptive of the motive of the gift, and that the annuity continued after the children attained 21 (*Farr v Hennis* [1880] W.N. 194). See SUPPORT.

In pleading a way to a place, the word anciently used was “unto” the place, but “towards” has been introduced in modern times (per Littledale J., *Simpson v Lewthwaite*, 3 B. & Ald. 230, 231); the reason for using the latter, and less rigid, word being shown by Kenyon C.J., in *Wright v Rattray*, 1 East, 381.

From A, “towards and unto” B, in an indictment for non-repair of a highway: see *R. v Downshire*, 5 L.J.K.B. 50. See TO.

“To or towards”: see *R. v M’Carthy* [1903] 2 Ir. R. 156, cited INTIMIDATE.

“Towards a child” (Indecency with Children Act 1960 (c.33) s.1(1)). “Towards” here means more than just “in the presence of”. The act of gross indecency must be directed at the child who must be aware of what is going on (*R. v Francis* (1989) 88 Cr.App.R. 127).

“Uses towards another person” (Public Order Act 1986 (c.64) s.4(1)(a)). These words connote present physical presence. The person “towards” whom threatening, abusive or insulting words are used must, for the purposes of this section, perceive with his own senses the threat, abuse or insult; so that a threat made by a person in a house against another person outside the house, who had not even heard it, had not been made “towards” that person (*Atkin v DPP* [1989] Crim. L.R. 581).

“With or towards”: see WITH.

TOWER WAGON. A “tower wagon” (Vehicles (Excise) Act 1971 (c.10) Sch.4 para.9(1)(b); Goods Vehicles (Operators’ Licences) Regulations 1969 (No.1636) Sch.1 para.20) is a mobile tower with the sole function of carrying out overhead work; its character is not destroyed by carrying the necessary tools and equipment but it is destroyed by carrying the subject-matter of the work (*Anderson & Healey v Paterson* [1975] 1 W.L.R. 228). Finance Act 1982 (c.39) Sch.5 para.15.

TOWING-PATH. See *Grand Junction Canal Co v Petty*, 21 Q.B.D. 273, cited PUBLIC ROAD; *Lea Conservancy v Button*, 6 App. Cas. 685; *Winch v Thames Conservators*, L.R. 9 C.P. 378.

TOWN. “By the name of a towne, villa, a mannor may passe” (Co. Litt. 5A).

“Towne (ville)”. “*Villa est ex pluribus mansionibus vicinata, et collate ex pluribus vicinis*. If a towne be decayed so as no houses remaine, yet it is a towne in law. And so if a borough be decayed, yet shall it send burgesses to the parliament, as Old Salisbury and others doe”—but the glory of Old Sarum was extinguished by the Representation of the People Act 1832 (c.45)—“It cannot be a towne in law, unlesse it hath, or in time past hath had, a church and celebration of divine service, sacraments, and burials” (Co. Litt. 115B; see further 1 Bl. Com. 114). In *Elliott v S. Devon Railway* (17 L.J. Ex. 262), Parke B., said that the legal meaning of the word “town” was “a place with a constable, or a church”. See BOROUGH; TOWNSHIP; VILL; VILLAGE.

But generally in legislation—i.e. ss.93, 128 of the Lands Clauses Consolidation Act 1845 (c.18); s.11 of the Railways Clauses Consolidation Act 1845 (c.20); Towns Improvement Clauses Act 1847 (c.34)—“town” is not restricted by its legal meaning, but is expounded popularly and means the space which, for the time being, is covered by, or occupied as accessory to, houses collected together in a mass, and in sufficient number to be ordinarily designated as a town; and includes unbuilt-on lands that may lie within the ambit of such collected mass of houses (*Elliott v South Devon Railway*, 2 Ex. 725; *R. v Cottle*, 16 Q.B. 412; *London & South Western Railway v Blackmore*, L.R. 4 H.L. 610; *Collier v Worth*, 1 Ex. D. 464; *Deards v Goldsmith*, 40 L.T. 328); but not lands outside such ambit, though within a borough (*Carington v Wycombe*

Railway, 3 Ch. 377; *Coventry v London, Brighton & South Coast Railway*, L.R. 5 Eq. 104; *Falkner v Somerset & Dorset Railway*, L.R. 16 Eq. 458).

Observe further that in “modern” Acts “town” will frequently be an expanding word, and not tied to the limits of the locality indicated at the time of its use. Thus, a prohibition in the Rochdale Market Act 1822 (c. lviii), against selling marketable commodities within the “town” of Rochdale elsewhere than in the market, meant the growing town of Rochdale, and not merely that town as it was in 1822 (*Killmister v Fitton*, 53 L.T. 959).

An auctioneer might (without other than his auctioneer’s licence) sell by sample exciseable commodities if their owner was licensed for their sale “in the same town or place” (Revenue (No.2) Act 1864 (c.56) s.14), that meant “same town” in its popular designation, and although (save for the Thames) there are houses all the way from the City of London to Sydenham, yet the City and Sydenham were not “in the same town”, within that section (*Casey v Rose*, 82 L.T. 616).

“Town”, in an agreement in restraint of trade, is to be construed in a popular sense, and the introduction of that word in such a phrase as “within the limits of the town of A” is very little, if at all, different from “within the limits of A” (per Kekewich J., *Houghton v Staines*, *The Times*, November 19, 1894).

“Town or village green” (Commons Registration Act 1965 (c.64) s.22(1)) concerns chiefly land which was set aside under the Inclosure Acts, and does not cover land acquired for public pleasure grounds under the Public Health Act 1875 (c.55) (*Re The Downs, Herne Bay, Kent*, Commons Commissioner, Ref. 219/D/2).

Stat. Def., Licensing Acts 1872 (c.94) s.74 and 1874 (c.49) s.32.

“Town or village green”: Stat. Def., Commons Registration Act 1965 (c.64) s.22(1).

TOWN GREEN. Stat. Def., Commons Act 2006 s.1(b).

“40. I acknowledge that there may be a legal distinction to be drawn between town or village greens, which were newly defined by section 22 CRA 1965, and rights of common which, though described in section 22, were not exhaustively defined.” (*Littlejohns, R. (on the application of) v Devon County Council* [2015] EWHC 730 (Admin).)

TOWN OR VILLAGE GREEN. See *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25.

TOWNSHIP. “Township” (Beerhouse Act 1840 (c.61) s.1): see *Preston v Buckley*, L.R. 5 Q.B. 391.

See HAMLET.

TOXIC CHEMICAL. Stat. Def., Chemical Weapons Act 1996 (c.6) s.1(5).

TOXIN. See the list of pathogens and toxins in Sch.5 to the Anti-terrorism, Crime and Security Act 2001 (c.24).

TOYS. Construction kits for making model aircraft and ships are “toys and games” and were subject to purchase tax under Group 20 of Sch.VIII of the Finance Act 1948 (c.49) (*Customs and Excise Commissioners v E Keil & Co* [1951] 1 K.B. 469).

TRACK. Betting, Gaming and Lotteries Act 1963 (c.2) s.55(1).

TRADE. Formerly “trade” was used in the sense of an “art or mystery”, e.g. that of a brewer (see ART), or a tailor (*Norris v Staps*, Hob. 211; see further INFERIOR TRADESMAN), but now “trade” has the technical meaning of buying and selling” (per Willes J., *Harris v Amery*, L.R. 1 C.P. 148; see also 2 Bl. Com. 476; Weights and Measures Act 1878 (c.49) s.19; per Halsbury C., *Sao Paulo Railway v Carter* [1896] A.C. 38; per Lord Davey, *Grainger v Gough* [1896] A.C. 325; cp. COMMERCE). Thus,

a covenant in a lease not to carry on any "offensive" trade does not prohibit a private lunatic asylum, "trade", in such a connection, being only applicable to a business of buying and selling (*Doe d. Wetherell v Bird*, 4 L.J.K.B. 52, cited OFFENSIVE).

But "trade" "may have a larger meaning so as to include manufactures" (*Commissioners of Taxation v Kirk* [1900] A.C. 588, cited DERIVE). So, the business of a telegraph company is a "trade" as regards house duty (*Bank of India v Wilson*, 3 Ex. D. 108, cited DWELLING-HOUSE, Cleasby B., dissenting). See further APPRENTICE.

"Trade" is not only etymologically but in legal usage a term of the widest scope. It is connected originally with the word "tread" and indicates a way of life or an occupation. In ordinary usage it may mean the occupation of a small shopkeeper equally with that of a commercial magnate. It may mean a skilled craft. Although it is often used in contrast with a profession the word "trade" is used in the widest application in the appellation "trade unions". Professions have their trade unions (*National Association of Local Government Officers v Bolton Corp* [1943] A.C. 166).

It is not essential to a "trade" that the persons carrying it on should make, or desire to make, a profit (per Coleridge C.J., *Re Law Reporting Council*, 22 Q.B.D. 279, which see also, *inf.*; but see per Halsbury C., and Lord Davey, above).

Trustee savings banking was a "trade" within art.1 of the Industrial Disputes Order 1951 (No.1376) (*R. v Industrial Disputes Tribunal, Ex p. East Anglian Trustee Savings Bank* [1954] 1 W.L.R. 1093).

The business of a jobbing builder was held to be a trade within a covenant not to use premises for the purposes of trade (*Westripp v Baldock* [1939] 1 All E.R. 279).

"Trade, profession or employment" (Landlord and Tenant Act 1954 (c.56) s.23(2)). The holding of a Sunday school (free of charge) does not amount to a trade, profession or employment within the meaning of this section (*Abernethie v Kleiman (A. M. & J.)* [1970] 1 Q.B. 10). Taking in lodgers and making virtually no profit by so doing was held not to be a "trade, profession or employment" within the meaning of this section (*Lewis v Weldcrest* [1978] 1 W.L.R. 1107).

"Gains arising . . . from any trade" (Income and Corporation Taxes Acts 1970 (c.10) s.108; 1988 (c.1) s.18). A company whose main purpose was to assume responsibility for foreign loans for ship-building was not "trading" for the purpose of these sections, so that losses made on currency exchange were not trading losses available to the group in computing corporation tax (*Overseas Containers (Finance) Ltd v Stoker* [1989] 1 W.L.R. 606). A company that acquired two loans secured on real property, and then carried on activities relating to the securities, was thereby carrying on a "trade" for corporation tax purposes (*Torbell Investments v Williams, Whiteway Laidlaw & Co v Same* [1986] S.T.C. 397). The profit from a one-off transaction of purchase, development and resale of a property by a self-employed general dealer and contractor was not profit from a "trade" and not therefore assessable under Sch.D (*Kirkham v Williams* [1991] 1 W.L.R. 863). A sum recovered, by way of damages, to compensate a trader for having paid a rent which was, owing to the negligence of a firm of estate agents, more than could reasonably be expected, was held to be a trading receipt for corporation tax purposes (*Donald Fisher v Spencer* [1989] S.T.C. 256). Earnings from prostitution are the earnings of a "trade" (*Inland Revenue Commissioners v Aken* [1990] S.T.C. 497). A one-off purchase, and sale three months later, of land for a profit need not be an adventure in the nature of "trade" for the purposes of Sch.D (*Manson v Morton* [1986] 1 W.L.R. 1343). But where a bank subscribed for shares of a customer company in difficulties it was held that, although the bank always intended

to sell the shares as soon as conditions permitted, the bank's profits when the shares were later sold amounted to a gain arising from "trade" (*Waylee Investment v IRC* [1991] S.T.C. 780). Fees received by a skilled freelance vision mixer involved in the production of television programmes were "gains arising from any trade" for the purposes of this section (*Hall v Lorimer*, *The Times*, November 18, 1993). Where a taxpayer bought 10 acres of land and an old mill for the purpose of providing himself with office and storage space, and subsequently built a house on the land, it was held that the land was not "trading stock" and its acquisition was not an "adventure in the nature of trade"; so that when selling it at a profit the taxpayer was not liable to schedule D income tax (*Kirkham v Williams* [1991] 1 W.L.R. 863). A farm worker organising a group, which included himself, to provide potato merchants with pickers and graders was not in business on his own account and so was not assessable under Schedule D. Nor was he an "employer" for PAYE purposes within the meaning of reg.29 of the Income Tax (Employment) Regulations 1973 (SI 1973/334) (*Andrews v King* [1991] S.T.C. 481).

"Carrying on a trade" (Finance Act 1971 (c.68) s.41(1)). Where a taxpayer company entered into a series of transactions under which two limited partnerships were set up to finance the continued production of two films, it was held that the expenditure incurred in acquiring master film negatives was incurred in "carrying on a trade" within the meaning of this section (*Ensign Tankers (Leasing) v Stokes* [1992] 1 A.C. 655).

Where a company which carried on the trade of leasing equipment bought and leased two films, the distribution agreements were held to be entered into in the ordinary course of a trade notwithstanding that they were made with companies which were part of the same group and under the same ultimate control (*Barclays Mercantile Industrial Finance v Melluish* [1990] S.T.C. 314).

"By way of trade" (Copyright Act 1956 (c.74) s.21(4A) as amended by s.1 of the Copyright Act 1956 (Amendment) Act 1982 (c.35)) means for the purposes of trading, so that a person who purchased infringing copies of cinematograph films from a trader for his own use could not be liable under this section (*Reid v Kennet* (1986) 150 J.P. 109).

"In the course of a trade or business" (Trade Descriptions Act 1968 (c.29) s.1(1)). The supply by an agent of a motorcar belonging to another which was not supplied in the ordinary course of the agent's business and for which the agent received no payment, was nevertheless supplied "in the course of a trade or business" within the meaning of this section (*Kirwin v Anderson* (1992) 11 Tr.L.R. 33).

"Earnings from any trade, professional, vocation" (Income and Corporation Taxes Act 1988 (c.1) s.619(1)). Income received by the taxpayer from the syndicates at Lloyd's, to which he belonged as an external name, was not income derived "from any trade" within the meaning of this section (*Koenigsberger v Mellor*, *The Times*, May 25, 1993).

Stat. Def., Income and Corporation Taxes Act 1988 (c.1) ss.6, 229; "includes any business or profession" (Trade Mark Act 1994 (c.26) s.103).

"Trade effluent": Stat. Def., Water Resources Act 1991 (c.57) s.221.

"Trade or commerce": see CIVIL RIGHTS.

Loss "connected with" a trade or business: see CONNECTED WITH.

"Succeed to any trade, etc.": see SUCCEED.

"Trade" carried on by a married woman: see SEPARATELY; CARRY ON.

TRADE

Stat. Def., Finance Act 1965 (c.25) s.89(1); Taxes Management Act 1970 (c.9) s.118; Income and Corporation Taxes Act 1970 (c.10) ss.238(4), 526; Capital Gains Tax 1979 (c.14) s.121(2); Protection of Trading Interests Act 1980 (c.11) s.1; Finance Act 1980 (c.48) Sch.18 para.23; Finance Act 1982 (c.39) Sch.9 para.16.

Stat. Def., Corporation Tax Act 2009 ss.33 and 298; Corporation Tax Act 2010 s.1119.

See PART OF A TRADE.

See BUSINESS; HABITUAL; LAWFUL TRADE; OFFENSIVE; PUBLIC TRADE OR BUSINESS; TRADER; TRADING; USAGE OF TRADE; USE; RESTRAINT OF TRADE; TRADES-PEOPLE; TRADE OR BUSINESS; IN HIS TRADE OR BUSINESS; BUSINESS; CALLING; WHOLLY.

For an extensive list of earlier authorities see Stroud's Judicial Dictionary 5th edn, Vol.5, pp.2659–2662.

“As an ordinary word in the English language ‘trade’ has or has had a variety of meanings or shades of meaning. Its meaning in tax legislation is a matter of law. Whether or not a particular activity is a trade, within the meaning of the tax legislation, depends on the evaluation of the activity by the tribunal of fact. These propositions can be broken down into the following components. It is a matter of law whether some particular factual characteristic is capable of being an indication of trading activity. It is a matter of law whether a particular activity is capable of constituting a trade. Whether or not the particular activity in question constitutes a trade depends upon an evaluation of all the facts relating to it against the background of the applicable legal principles. To that extent the conclusion is one of fact, or, more accurately, it is an inference of fact from the primary facts found by the fact-finding tribunal.” (*Eclipse Film Partners No.35 LLP v Revenue and Customs Commissioners* [2015] EWCA Civ 95.)

TRADE ASSOCIATION. Stat. Def., Companies Act 2006 s.375(2).

TRADE DEBTS. “Trade debts”, on which a bankruptcy petition is founded is not confined to those incurred in buying or selling, it includes other obligations imposed on a debtor by his trading, e.g. excess profits tax (*Theophile v Solicitor-General* [1950] A.C. 186).

See *Tailby v Official Receiver*, 13 App. Cas. 523, cited ALL; *Hadley v Hadley* [1898] 2 Ch. 680, cited PAYMENT.

“My trade debts”: see STOCK-IN-TRADE.

TRADE DESCRIPTION. As “applied” within the meaning of s.5(1)(d) of the Merchandise Marks Act 1887 (c.28) “trade description” was not limited to a description used in an actual physical connection with goods; therefore, falsely to invoice a “barrel” of beer which was not a barrel, was an offence within this latter section (*Budd v Lucas* [1891] 1 Q.B. 408); so, to falsely say of a ham that it was Scotch (*Coppen v Moore* [1898] 2 Q.B. 306). But see *Langley v Bombay Tea Co* [1900] 2 Q.B. 460. See further *Star Tea Co v Whitworth*, 20 T.L.R. 539. See further *Cameron v Wiggins* [1901] 1 K.B. 1; *Evans v British Doughnut Co Ltd* [1944] K.B. 102.

The mileage shown on the odometer of a car offered for sale is a “trade description” within the meaning of the Trade Descriptions Act 1968 (c.29) s.1(1)(b) (*Simmons v Potter* [1975] R.T.R. 347; *Taylor v Smith* [1974] R.T.R. 190; *Lewis v Mahoney* [1977] Crim. L.R. 436).

The words “extra value” on the wrapper of a chocolate bar do not amount to a “trade description” within the meaning of the Trade Descriptions Act 1968 (c.29) s.2(1) (*Cadbury v Halliday* [1975] 1 W.L.R. 649).

Stat. Def., Merchandise Marks Act 1953 (c.48) s.1.

See also FALSE TRADE DESCRIPTION.

TRADE DISPUTE. A dispute between workers in their capacity as workers and an employer about employment matters was an “industrial dispute” under the Industrial Relations Act 1971 (c.72), even if the employer was not in contractual relations with the workers (*Midland Cold Storage v Turner* [1972] I.C.R. 230). A strike called for political reasons could arguably be in furtherance of an “industrial dispute” within the meaning of this Act, where some of the members of the union calling the strike were employed by the government in protest against the policies of which the strike was directed (*Sherard v AUEW* [1973] I.C.R. 421). A dispute between workmen and workmen was not an “industrial dispute” within the Industrial Relations Act 1971 (c.72), and where workers refused to work with a non-union employee the employees had a remedy in tort (*Cory Lighterage v TGWU* [1973] I.C.R. 339).

Where a dispute concerns terms and conditions of employment it falls within the definition of “trade dispute” in s.29(1) of the Trade Union and Labour Relations Act 1974 (c.52) as amended by the Employment Act 1982 (c.46) s.18, even though it is being pursued for other motives which are predominant and extraneous; in this case the campaign of the International Transport Workers Federation against ships sailing under flags of convenience (*N.W.L. v Woods*; *N.W.L. v Nelson* [1979] 1 W.L.R. 1294, distinguishing *The “Camilla M”* [1979] 1 Lloyd’s Rep. 26). But coercive action which is not connected with the terms and conditions of employment (in this case the threat to stop a broadcast to South Africa) is not a “trade dispute” (*BBC v Hearn* [1977] 1 W.L.R. 1004). Where the union instructed its members not to carry out certain instructions issued by British Telecom there was no “trade dispute” within the meaning of this section since the union’s primary dispute was with the government and the plaintiff over the policy of liberalising the telecommunications system (*Mercury Communications v Scott-Garner and Another* [1984] 1 All E.R. 179).

“In... furtherance of a trade dispute” (Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) s.219). Action taken by teachers who refused to carry out certain duties in relation to national curriculum assessment which they considered unreasonable was a “trade dispute” within the meaning of this section (*Wandsworth London BC v National Association of School Masters and Union of Women Teachers* [1994] I.C.R. 81).

A dispute between Westminster City Council and a number of employees who were members of a trade union about the proposed privatisation and contracting out of advisory services was predominantly about terms and conditions of employment and not about public policy. So it was a trade dispute for the purposes of ss.219 and 244 of the Trade Union and Labour Relations (Consolidation) Act 1992 (*Unison v Westminster City Council*, T.L.R., April 3, 2001, CA).

For the purposes of s.244(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) a trade dispute includes a dispute “over terms and conditions of employment” which in turn includes a dispute about whether there is a contractual obligation to teach a particular pupil (*P. (A Minor) v National Association of School Masters/Union of Women Teachers* [2003] 2 W.L.R. 545, HL; [2003] 1 All E.R. 993, HL).

TRADE

Stat. Def., Social Security Contributions and Benefits Act 1992 (c.4) s.27; Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) s.218; Jobseekers Act 1995 (c.18) s.35(1).

Stat. Def., Trade Union and Labour Relations Act 1974 (c.52) s.29; Social Security Act 1975 (c.14) s.19.

See hereon BESET; BOYCOTT; CONNECTED WITH; INDUSTRIAL EMPLOYMENT; INTERFERE; RAT. See also CONTEMPLATION; FURTHERANCE; ORGANISATION SECONDARY.

TRADE EXPENSE. "The principle which is to be deduced from the cases is that where a sum of money is laid out for the acquisition or improvement of a fixed capital asset it is attributable to capital, but if no alteration is made in the fixed capital asset by the payment, then it is properly attributable to revenue, being in substance a matter of maintenance, the maintenance of the capital structure or the capital assets of the company" (per Lawrence J., *Southern v Borax Consolidated Ltd* [1941] 1 K.B. 111, 116). See *Rhodesia Railways v Income Tax Collector, Bechuanaland* [1933] A.C. 368, where the distinction is drawn between cost of relaying a railway line so as to restore it to its original condition (income expense), and of relaying it so as to improve it (capital expense).

A sum paid as monopoly value on the grant of a licence was held to be a capital payment (*Kneeshaw v Abertolli* [1940] 2 K.B. 295; *Henriksen v Grafton Hotel Ltd* [1942] 2 K.B. 184).

See WHOLLY.

TRADE MARK. "Mark" (Trade Marks Act 1938 (c.22) s.68) is something which is apt only to distinguish goods. The goods themselves are not "marks" for the purposes of this section; so that a bottle, however distinctive its shape, is a container, not a "mark" (*Re Coca-Cola Co* [1986] 1 W.L.R. 695).

Stat. Def., "any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings" (Trade Marks Act 1994 (c.26) s.1(1)).

See also ADD; CALCULATED TO DECEIVE; DISTINCTIVE; ESSENTIAL; FANCY WORD; FRANCHISE; INDIVIDUAL; NAME; PUBLIC USE; REGISTERED; SPECIAL; WORD; Cp. TRADE NAME.

TRADE NAME. A trade name may be, and often is, a trade mark, but it has a wider application than that. In its wider sense, it means the name under which a person (or company) carries on, and has habitually carried on, his business, and by which he is known in the trade or business to which his business belongs, and which accordingly distinguishes the nature, quality, and fame of his goods and dealings. "It should never be forgotten that the sole right to restrain anybody from using any name he likes in the course of any business he chooses to carry on, is a right 'in the nature of' a trade mark, i.e. a man has a right to say—'you must not use a name, whether fictitious or real—you must not use a description, whether true or not—which is intended to represent, or calculated to represent, to the world that your business is my business, and so by a fraudulent mis-statement deprive me of the profits of the business which would otherwise come to me' An individual plaintiff can only proceed on the ground that, having established a business reputation under a particular name, he has a right to restrain anyone else from injuring his business by using that name" (per James L.J., *Levy v Walker*, 10 Ch. D. 447, 448). See hereon *Burgess v Burgess*, 22 L.J. Ch. 675; *Turton v Turton*, 42 Ch. D. 128; *Jamieson v Jamieson*, 42 S.J. 197; *Pinet v Pinet*

[1898] 1 Ch. 179; *Montgomery v Thompson* [1891] A.C. 217; *Birmingham Vinegar Co v Powell* [1897] A.C. 710; *Saxlehner v Appollinaris Co* [1897] 1 Ch. 893; *Parsons v Gillespie* [1898] A.C. 239; *Cash v Cash*, 84 L.T. 349; 86 L.T. 211; *Grand Hotel Co of Caledonia Springs v Wilson* [1904] A.C. 103, distinguishing *Montgomery v Thompson* (above), *Wotherspoon v Currie*, L.R. 5 H.L. 508, and citing *Johnston v Orr Ewing*, 7 App. Cas. 219, as an example of a case which (whilst it would not mislead a dealer) was an infringement of a trade name or mark, because it was calculated to mislead a retail purchaser. The form of the injunction in this last case (as approved by House of Lords) was adopted by House of Lords in *Reddaway v Banham* [1896] A.C. 199, which last case was distinguished in *Cellular Clothing Co v Maxton* [1899] A.C. 326; *Warwick Tyre Co v New Motor Co* [1910] 1 Ch. 248; *Ash v Invicta Manufacturing Co*, 55 S.J. 348; *Elliott v Expansion of Trade Ltd*, 54 S.J. 101; *Dorman & Co v Meadows Ltd* [1922] 2 Ch. 332.

“Patent or other trade name”, in proviso to s.14 of the Sale of Goods Act 1893 (c.71). What is within this phrase is a question of fact in each case; it is confined to articles which have in fact a name by which they are known and dealt in, and under which they can be (or rather usually are) ordered: see *Bristol Tramways Co v Fiat Motors* [1910] 2 K.B. 381, cited MAKE KNOWN.

As to restraining the registration of a company taking a name similar to that of an existing company, see *Hendriks v Montagu*, 17 Ch. D. 638; *Tussaud v Tussaud*, 44 Ch. D. 678.

See passing off, under PASSING. See also Registration of Business Names Act 1916 (c.58).

See also USUAL TRADE NAME.

TRADE OR BUSINESS. “Trade or business or an undertaking” (Contracts of Employment Act 1963 (c.49) Sch.1 para.10(2)). A company which sold its factory, plant and machinery (but not the name or goodwill) to another, and moved to set up again elsewhere, was held to have “transferred” its “business” within the meaning of this paragraph (*Woodhouse v Brotherhood* [1972] 1 W.L.R. 401).

“Trade or business” (Agricultural Holdings Act 1948 s.1(2)) is not limited to any specific agricultural trade or business but may include, for instance, where a field is used for grazing, and is therefore agricultural land within s.94(1) of the Act, and is so used for the purposes of a riding school, the said riding school is a trade or business within the Act (*Rutherford v Maurer* [1962] 1 Q.B. 16; [1961] 3 W.L.R. 5; [1961] 2 All E.R. 775).

“Trade or business” (Town and Country Planning (Use Classes) Order 1950 (No.1131) art.2(2); Town and Country Planning (Use Classes) Order 1963 (SI 1963/708) as amended by Town and Country Planning (Use Classes) (Amendment) Order 1965 (SI 1965/229)) can include the cooking of school meals by a local authority (*Rael Brook v Minister of Housing and Local Government* [1967] 2 Q.B. 65).

“Trade or business” (Town and Country Planning (Use Classes) Order 1972 (SI 1972/1385)). The making of articles by an artist expressing his art form should not be regarded as a process carried on in the course of “trade or business” even though those articles are sometimes sold (*Tessier v Secretary of State for the Environment* (1975) 31 P. & C.R. 161).

The Home Office Supplies and Transport branch does not carry on a “trade or business” within s.1 of the Criminal Evidence Act 1965 (c.20) (*R. v Gwilliam* [1968] 1 W.L.R. 1839). A National Health Service hospital is not a “business” for the purposes

of this section and, therefore, records kept by such a hospital are not admissible in evidence in criminal proceedings under the conditions specified by the Act (*R. v Crayden* [1978] 1 W.L.R. 604).

"In connection with any trade or business" (Transport Act 1968 (c.73) s.60(1)(b)). A converted coach used for transporting a stock-car for racing, from which no profit was made, was not being used "in connection with any trade or business", notwithstanding that the competition involved sponsorship and prize money (*Stirk v McKenna* [1984] R.T.R. 330).

"Trade or business" (Trade Descriptions Act 1968 (c.29) s.1). A full-time postman who carried out repairs and improvements to vehicles in his spare time, and then sold them by placing advertisements in newspapers, was not doing so "in the course of a trade or business" within the meaning of this section (*Blakemore v Bellamy* [1983] R.T.R. 303). Where a supplier of goods sells goods that are not his usual stock-in-trade he nevertheless does so as part of a trade or business within the meaning of this section (*Corfield v Sevenways Garage* (1984) 148 J.P. 684). A person who sold his car showing an inaccurate mileage figure on the odometer did not do so "in the course of a trade or business" within the meaning of this section, notwithstanding that he had used the car almost exclusively for his business (*Davies v Summer* [1984] 1 W.L.R. 1301). See also BUSINESS; TRADE.

"Carry on any trade or business in a Park" (Royal and Other Parks and Gardens Regulations 1977 (SI 1977/217)). A person can be carrying on a "trade" within the meaning of this regulation even though no actual goods are present or change hands. Thus a photographer photographing or offering to photograph passing pedestrians for a price can be carrying on a trade (*Burgess v McCracken* (1986) 150 J.P. 529).

"In the course of a trade or business" (Trade Descriptions Act 1968 (c.29) s.1). The first sale by a proprietor of a taxi firm of one of his two cars could not be said to amount to a normal practice and was therefore not "in the course of a trade or business" for the purposes of this section (*Devlin v Hall* [1990] R.T.R. 320).

"Trade or business" (Trade Descriptions Act 1968 (c.29) s.14(1)). The Law Society do not carry on a "trade or business" within the meaning of this section and cannot therefore be accused of making a false advertisement (*R. v Bow Street Magistrates' Court, Ex p. Joseph* (1986) 130 S.J. 593). A car, which the seller had used as a taxi, sold to a buyer who gave the seller another car in part exchange, had not been sold in the course of "trade or business" within the meaning of this section (*Devlin v Hall* [1990] R.T.R. 320).

"If a trade or business . . . is transferred" (Contracts of Employment Act 1963 (c.49) Sch.1 para.10(2)); see TRANSFER.

TRADE OR FINANCE PURCHASER. A part-time motor dealer is still a "trade or finance purchaser" within the meaning of the Hire Purchase Act 1964 (c.53) s.29(2) even where he acquires a vehicle in his private capacity for his own use (*Stevenson v Beverley Bentinck* [1976] 1 W.L.R. 483).

TRADE ORGANISATION. The General Medical Council is not a trade organisation for the purposes of s.13 of the Disability Discrimination Act 1995 (*Cox v General Medical Council*, T.L.R., April 16, 2002, EAT).

TRADE PROCESS. Burning debris on a demolition site is a "trade process" within the meaning of s.1 of the Clean Air Act 1968 (c.62) (*Sheffield City Council v ADH Demolition* (1983) 82 L.G.R. 177).

TRADE PURPOSES. “For the purposes of trade”: see PURPOSES. See DOMESTIC PURPOSES.

TRADE REFUSE. Refuse collected by the local authority from refuse bins placed by the owners of a family holiday centre for use by the temporary occupiers of chalets, caravan and camping sites, although consisting of items normally to be found in domestic refuse bins, was held to be “trade refuse” within the meaning of s.73 of the Public Health Act 1936 (c.49) on the grounds that the holiday centre comprised one entity, and the refuse was the result of carrying on a trade or business there (*Pentewan Sands v Restormel BC* (1980) 78 L.G.R. 642). See REFUSE.

TRADE REGULATION. See REGULATE.

TRADE UNION. A union of co-operative trading Societies was not a trade union within the meaning of the Trade Union Act 1871–1913 (*Birtley & District Co-op Society v Windy Nook & District Co-op Society* [1960] 1 Q.B. 1).

A trade union, though not an incorporated body, is capable of entering into contracts and is liable for breach of contract with its members (*Bonsor v Musicians’ Union* [1956] A.C. 104).

Stat. Def., Trade Union Act 1913 (c.30) ss.1, 2; Factories Act 1961 (c.34) s.117(7); Trade Union and Labour Relations Act 1974 (c.52) s.28; Trade Union and Labour Relations Act 1992 (c.52) s.1.

“Provident benefits” of a trade union: see PROVIDENT.

See BESET; BOYCOTT; INTIMIDATE; THREAT; TRADE.

TRADE UNION ACTIVITY. (Employment Protection (Consolidation) Act 1978 (c.44) s.28(1)). A TUC lobby of Parliament in connection with proposed legislation affecting the teaching profession was held not to be a “trade union activity” for the purposes of this section (*Luce v Bexley LBC* (1990) 88 L.G.R. 909). Attending a meeting of a district co-ordinating committee set up by a single union was held to be “taking part in any trade union activity” within the meaning of this section (*London Ambulance Service v Charlton* [1992] I.R.L.R. 510).

TRADER. “Traders”, under the Bankruptcy Laws, were broadly stated as “such as live by buying and selling” (1 Jac. 1, c.15 s.1). That broad definition was amplified and made more precise by subsequent legislation; and for an enumeration of persons who formerly were liable to be adjudicated bankrupt as “traders”, see Bankruptcy Act 1869 (c.71) Sch.1.

“Being a trader”: see BEING.

Stat. Def., Transport Act 1953 (c.13) s.21(7); Capital Allowances Act 1968 (c.3) Sch.6 para.2; Consumer Credit Act 1974 (c.39) ss.40, 103, 148.

See TRADE; TRADERS; TRADING PERSON; ORDINARY CALLING; CONSTANT TRADER.

Stat. Def., “a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf” (Consumer Rights Act 2015 s.2).

Stat. Def., Consumer Rights Act 2015 s.2.

TRADESMAN. “The term ‘tradesman’ (Sunday Observance Act 1677 (c.7) s.1) cannot be extended by a reasonable construction to a farmer” (per Cockburn C.J., *R. v Silvester*, 33 L.J.M.C. 80), nor to a hairdresser or barber (*Palmer v Snow* [1900] 1 Q.B. 725), but it includes the proprietor of a shop who supplies for money materials with which customers can show their skill by throwing rings or darts, obtaining prizes if successful, and who maintains a shooting stand where customers are supplied with

TRADESPEOPLE

guns and cartridges for shooting at targets (*Hawkey v Stirling* [1918] 1 K.B. 63). It includes a person who conducts a lending library (*Lee v Craven* [1935] 2 K.B. 161); but not, it seems, an estate agent (*Gregory v Fearn* [1953] 1 W.L.R. 974). Nor does it cover a limited liability company, and a contract made between two such companies on a Sunday was not, therefore, void by virtue of that section (*Rolloswin Investments v Chromolit Portugal* [1970] 1 W.L.R. 912).

See TRADE; OTHER.

TRADESPEOPLE. See *Baxendale v North Lambeth Liberal Club* [1902] 2 Ch. 429, cited WAY.

TRADING. "Trading" (Merchant Shipping Act 1854 (c.104) s.379(3); cp. now Pilotage Act 1913 (c.31) s.11) means "for the time being trading", or "when trading", and does not mean that a ship must be constantly trading to Brest, etc. in order to obtain the exemption from compulsory pilotage which the section provides (*Courtney v Cole*, 19 Q.B.D. 447; see further *The Wesley*, Lush. 268; *The Sutherland*, 12 P.D. 154; *The Rutland* [1896] P. 281; [1897] A.C. 333, in which last case Lopes L.J. said, "I take a 'ship trading', or a 'trading ship', to be a ship carrying cargo as contradistinguished from a ship not carrying cargo, e.g. a yacht or a man-of-war"; *The Columbus*, 80 L.T. 203; but see *The Glanystwyth* [1899] P. 118, cited COASTING TRADE). See hereon EUROPE.

There is a "trading between" two ports, A and B, where a vessel loads her cargo elsewhere and brings it to port A, discharging it, or the greater part of it, there, and then, without taking in any fresh cargo at A, proceeds to port B (per Collins M.R., *The Cayo Bonito* [1903] P. 218, citing *Courtney v Cole* and *The Rutland* above). A vessel "trading to ports between Boulogne (inclusive) and the Baltic", within the Order in Council of February 18, 1854, is not confined to a vessel trading within those limits exclusively (*The Cayo Bonito* [1903] P. 203).

"Trading inwards", "trading outwards": see *Mersey Docks v Henderson*, 13 App. Cas. 595; *Cross v Pagliano*, L.R. 6 Ex. 9; *Mersey Docks v Twigge*, 67 L.J.Q.B. 604, cited BEYOND SEAS. In *The Hanna*, L.R. 1 A. & E. 283, cited PASSENGER, "Dr. Lushington appears to have held that 'trading to' meant 'trading between', and applied to outward, as well as inward, voyages" (per Jeune P., *The Columbus*, above).

"Trading-place": see *Graham v Shiels*, 8 Sc. L.T. 368, cited DWELLING-HOUSE. See STREET TRADING.

A sub post office carried on with a chemist's shop on premises is outside a covenant "trading to be restricted to chemistry and druggist's business and dentist or doctor", as the office of a sub postmaster is a branch of the public service, in the nature of a monopoly, at a fixed remuneration, and cannot be said to be trading: see *Frampton v Gillison* [1927] 1 Ch. 196.

"Not trading for profit", in s.12(2) of the Acquisition of Land (Assessment of Compensation) Act 1919 (c.57): see *Metropolitan Water Board v Berton* [1921] 1 Ch. 299.

See TRADE.

TRADING COMPANY. "Trading and other public companies" (Apportionment Act 1870 (c.35) s.5), included any public company, but not a private partnership (*Re Griffith, Carr v Griffith*, 12 Ch. D. 655).

Stat. Def., "a company whose business consists wholly or mainly of the carrying on of a trade or trades" (Income and s.13ZA(3)(b) of the Corporation Taxes Act 1988 (c.1), inserted by s.86 of the Finance Act 2001 (c.9)).

Stat. Def., Finance Act 1978 (c.42) s.46; Capital Gains Tax Act 1979 (c.14) s.126; Finance Act 1980 (c.48) s.37(12) Sch.18 para.23; Finance Act 1982 (c.39) Sch.9 para.16; Finance Act 1983 (c.28) s.24(4); Finance Act 1984 (c.43) s.91; Finance Act 1985 (c.54) Sch.20 para.1(2); Income and Corporation Taxes Act 1988 (c.1) ss.229, 576, 756.

Stat. Def., Income Tax Act 2007, s.151.

See WHOLLY OR MAINLY.

See PUBLIC COMPANY.

TRADING ESTABLISHMENT. In an agreement in restraint of trade, “trading establishment” means any business contrary to the intention of the agreement and which would be likely to interfere with the trade acquired under the agreement (*Avery v Langford*, 23 L.J. Ch. 837; Kay, 663).

TRADING GROUP. Stat. Def., Finance Act 1985 (c.54) Sch.20 para.1(2); Income and Corporation Taxes Act 1988 (c.1) ss.229, 576; Taxation of Chargeable Gains Act 1992 (c.12) Sch.6 para.1(2).

TRADING INCOME. “Trading income” (Finance Act 1965 (c.25) s.58(7)). Where shipowners set aside sums of money as a depreciation fund to finance the replacement of ships, and invested that money in government securities, it was held that, as the depreciation fund was not actively employed in the company’s trade so as to be at risk in the ordinary course of business, the interest received was not “trading income” within the meaning of this section (*Bank Line v IRC* [1974] S.T.C. 342).

See INCOME.

(Pension Scheme Act 1993 (c.48) s.146(1).) “Trustees or managers in s.146(1) should be given their ordinary and natural meaning” (*Century Life v Pensions Ombudsman* [1995] 11 C.L. 585).

TRADING LOSS. See LOSS.

TRADING PARTNERSHIP. See *Wheatley v Smithers* [1906] 2 K.B. 321, cited TRANSFER; PARTNERSHIP.

A partnership formed for the purpose of running a cinematograph entertainment is not a trading partnership. Such a partnership is one which involves the purchase and sale of goods: see *Higgins v Beauchamp* [1914] 3 K.B. 1192.

TRADING PERSON. A person who went from the town in which he resided and took a room at another town, and there sold goods which were brought direct from the town of his residence, was a “trading person going from town to town” within s.6 of the Hawkers Act 1810 (c.41) (*Manson v Hope*, 31 L.J.M.C. 191, following *Att-Gen v Tongue*, 12 Price, 51; *Att-Gen v Woolhouse*, 12 Price 65; *Dean v King*, 4 B. & Ald. 517). See further *R. v Turner*, 4 B. & Ald. 510; HAWKER.

TRADING PROFIT. See *Rees Roturbo Development Syndicate v Inland Revenue Commissioners* [1928] A.C. 132.

Income Tax Act 1918 (c.40) Sch.D may include the results of collecting the debts owing to a partnership in process of being wound up (*Hillerns & Fowler v Murray*, 146 L.T. 474). See now Income and Corporation Taxes Act 1970 (c.10) s.108.

TRADING RECEIPT See *Inland Revenue Commissioners v West* (1950) S.L.T. 337 (sums received for reconditioning vessels after requisition not trading receipts for tax purposes).

TRADING STAMP. Stat. Def., Trading Stamps Act 1964 (c.71) s.10; Consumer Credit Act 1974 (c.39) Sch.3 para.26(3).

TRADING STOCK. “Trading stock belonging to the trade at the discontinuance” (Income Tax Act 1952 (c.10) s.143(1); now Income and Corporation Taxes Act 1970 (c.10) s.137(1)). Once that stock has been identified (in this case two blocks of flats) it matters not whether it is retained for some time or is disposed of immediately after the discontinuance of the trade, or simultaneously with the discontinuance (*Moore v Mackenzie (R.J.) & Sons* [1972] 1 W.L.R. 359).

For an asset to be acquired as “trading stock” within the meaning of s.274(1) of the Income and Corporation Taxes Act 1970 (c.10) the purpose of the acquisition must be commercial in character. So that a lease acquired by a company in a group with the object of obtaining group relief for a trading loss under s.258(1), without in fact changing the lease from a capital asset to a trading asset, had not been acquired as “trading stock” within the meaning of this section (*Coates v Arndale Properties* [1984] 1 W.L.R. 1328). For the same reason the purchase by a company from its parent company of worthless shares in a West German company were not acquired “as trading stock”, as there had been no possibility of using them in the course of trade with the purpose of making a profit (*Reed v Nova Securities* [1985] 1 W.L.R. 133).

Cars obtained by a dealer from the distributor for sale on consignment terms formed part of the dealer’s “trading stock” for corporation tax purposes within the meaning of para.9(1) of Sch.5 of the Finance Act 1976 (c.40) (*Fraser v London Sports Car Centre* [1985] S.T.C. 688). New motor cars purchased from the manufacturer by its own finance company for supply to dealers, as part of a financing package, formed part of that company’s trading stock within the meaning of Sch.5 (*General Motors Acceptance Corp v IRC* [1985] S.T.C. 408).

The decision in *General Motors Acceptance Corp v IRC* [1985] S.T.C. 408 was upheld by the Court of Appeal [1987] S.T.C. 122. Supplies of spare parts, motor tyres and diesel fuel held by a company in the road transport business constituted “trading stock” for the purposes of paras 29, 30 of Sch.5 to the Finance Act 1976 (c.40) (*Ashworth v Mainland Car Deliveries* [1987] S.T.C. 481).

Loans acquired by a company for the purpose of safeguarding its credibility as a bank were held to be “trading stock” for the purposes of the Income and Corporation Taxes Act 1970 (c.10) (*Torbell Investments v Williams, Whiteway Laidlaw v Same* [1986] S.T.C. 397).

In determining whether an asset is acquired as trading stock for the purposes of the Taxation of Chargeable Gains Act 1992 s.173(1), fiscal considerations are to be disregarded and the test to be applied is whether the asset has been acquired in the course of a trade with a view to resale for profit. (*New Angel Court Ltd v Adam* [2004] 1 W.L.R. 1988, CA).

Stat. Def., Income Tax (Trading and Other Income) Act 2005 (c.5) s.174.

Stat. Def., Income and Corporation Taxes Act 1970 (c.10) s.137(4); Finance Act 1975 (c.7) s.18; Finance (No.2) Act 1975 (c.45) ss.58, 59, Sch.10 para.16; Finance Act 1976 (c.40) Sch.5 para.29(5); Capital Gains Tax Act 1979 (c.14) s.70(7); Finance Act 1980 (c.48) Sch.7 paras 7, 8; Finance Act 1981 (c.35) Sch.9.

TRAFFIC. “Traffic” in s.1(1) of the Railway and Canal Traffic Act 1913 (c.29) referred to the class of goods, the particular industry in which the complainant was interested: see *Butterbey Co v Midland Railway Co* [1920] 3 K.B. 86.

“Traffic sign” (Road Traffic Act 1930 (c.43) s.48(9) see Road Traffic Regulation Act 1967 (c.76) s.54) includes a sign directing a driver to stop (*Langley Cartage Co v*

Jenks; Adams v Jenks [1937] 2 K.B. 382); but does not include the white lines painted in the centre of roadways (*Evans v Cross* [1938] 1 K.B. 694).

Where a lease was determinable if the premises should be “required for traffic purposes”, it was held that “traffic purposes” connoted more than controlling traffic moving along roads, and could include the use of premises for the purposes of saving time and cost in constructing a road, and the avoidance of congestion elsewhere (*Young v Greater London Council* (1967) 203 E.G. 851).

Street “for ‘foot’ traffic only” (Metropolis Management Act 1882 (c.14) s.8): see *London CC v Davis*, 64 L.J.M.C. 212.

“Like traffic”: see LOWEST RATE.

Stat. Def., Railway and Canal Traffic Act 1854 (c.31) s.1; Regulation of Railways Act 1873 (c.48) s.3; Highways (Provision of Cattle-grids) Act 1950 (c.24) s.17; Highways Act 1980 (c.66) s.329; New Roads and Street Works Act 1991 (c.22) s.105.

See EXTRAORDINARY TRAFFIC; LOCAL TRAFFIC; PUBLIC TRAFFIC; THROUGH TRAFFIC; TRAFFICKING; FACILITIES; MERCHANDISE TRAFFIC; ARISING; DEVELOP; STATION.

TRAFFIC CASUALTY. Stat. Def., Road Traffic (NHS Charges) Act 1999 (c.3) s.1(1).

TRAFFIC DATA (COMMUNICATIONS). Stat. Def., Prisons (Interference with Wireless Telegraphy) Act 2012 s.4.

TRAFFIC OFFICER. Stat. Def., Traffic Management Act 2004 (c.18) Pt 1.

TRAFFICKING. “Trafficking in a trade mark” (Trade Marks Act 1938 (c.22) s.28(6)) means dealing in a trade mark primarily as a marketable commodity in its own right and not primarily for the purpose of identifying or promoting merchandise in which the proprietor of the mark is interested (*Re American Greetings Corporation’s Application* [1984] 1 W.L.R. 189).

Stat. Def., Modern Slavery Act 2015 s.2.

TRAILER. “Trailer” (Road Traffic Acts 1930 (c.43) s.1; 1960 (c.16) s.253(1); 1972 (c.20) s.190(1)). The word should be given its ordinary, and not a strictly technical construction. A four-wheeled vehicle being towed with two wheels off the ground is not a trailer with not more than two wheels (*Carey v Heath* [1952] 1 K.B. 62); a towed empty poultry shed is a trailer (*Garner v Burr* [1951] 1 K.B. 31). A van being towed can at the same time be both a “trailer” and a “mechanically propelled vehicle” within the meaning of these sections (*Cobb v Whorton* [1971] R.T.R. 392).

An articulated mobile crane is in effect one vehicle and cannot be said to be a front part towing a “trailer” within the meaning of the Motor Vehicles (Authorisation of Special Types) General Order 1979 (SI 1979/1198) art.25(2) (*DPP v Evans and Hewden Stuart Heavy Cranes*, *The Times*, November 13, 1987). But an articulated lorry trailer remained a “trailer” for the purposes of s.40(5)(b) of the Road Traffic Act 1972 (c.20) even when attached to a tractor unit (*NFC Forwarding v DPP* [1989] R.T.R. 239).

Stat. Def., Road Traffic Regulation Act 1967 (c.76) ss.99(1), 104 as amended by the Transport Act 1982 (c.49) s.56; Road Traffic Act 1972 (c.20) ss.34(3), 65(3)(4), 190; Finance Act 1982 (c.39) Sch.5 para.15; Highways Act 1980 (c.66) s.115; Road Traffic Regulation Act 1984 (c.27) ss.136, 138.

See TAILBOARD.

TRAIN. A series of trucks propelled by hydraulic power into a goods station, was a “train upon a railway” within s.1(5) of the Employers’ Liability Act 1880 (c.42) (*Cox*

TRAINER

v Great Western Railway, 9 Q.B.D. 106). This phrase is very comprehensive. "I should think, speaking in a general way, that the legislature meant that a locomotive engine by itself, or anything that was drawn along a railway or was in course of being drawn along a railway by that locomotive engine, should be included in a 'train'. I doubt very much whether it would depend upon the number of carriages or the number of vehicles going upon wheels which the locomotive was taking along the railway. I should think the legislature intended a very wide scope to be given to the use of these words" (per Halsbury C., *McCord v Cammell* [1896] A.C. 64). See RAILWAY; CHARGE OR CONTROL; CONTROL.

TRAINER. A trainer of horses is one who trains horses for other persons for profit; one who only trains his own horses does not commit a breach of an injunction restraining him from "carrying on the business of a trainer of horses upon the down" (*Lancashire v Hunt*, 11 T.L.R. 275). See Performing Animals (Regulation) Act 1925 (c.38) s.5, which also defines "trainer".

TRAINING. Stat. Def., in relation to teachers, includes "any training or education with the object of fitting persons to be teachers, or better teachers",—so includes continuing professional education (Education Act 1994 (c.30) s.19(4); "includes education" (Nurses, Midwives and Health Visitors Act 1997 (c.24) s.22(1)).

Stat. Def., including (a) full-time and part-time training; (b) vocational, social, physical and recreational training; (c) apprenticeship training (Apprenticeships, Skills, Children and Learning Act 2009 s.80).

TRAINS OF TUBS. See *Morgan v Evans* [1926] 2 K.B. 74.

TRAITOR. See TREASON; FREE PARDON.

TRAMCAR. See COACH. See further *Yorkshire Electric Tramways v Ellis* [1905] 1 K.B. 396, cited HACKNEY CARRIAGE. Cp. TRAMWAY CAR.

Stat. Def., Road Traffic Regulation Act 1967 (c.76) s.104; Road Traffic Act 1972 (c.20) s.196; Public Passenger Vehicles Act 1981 (c.14) s.82; Road Traffic Regulation Act 1984 (c.27) s.141.

TRAMMEL. See MESH.

TRAMP. A tramp ship or vessel is one "going from no particular port to no other particular port, but going wherever she can get paying freights—here to-day and there to-morrow" (per Lord Adam, *Watson v Inland Revenue Commissioners*, 39 L.R. 604).

TRAMROAD. See TRAMWAY.

TRAMWAY. Stat. Def., Transport and Works Act 1992 (c.42) s.67.

TRANSACTION. "Transaction" (Finance Act 1973 (c.51) Sch.19 para.10(1)). Where one company acquired over 75 per cent. of the shares of another company by aggregating a number of share allotments, each allotment was a separate "transaction" within the meaning of this paragraph (*Rothschild (J) Holdings v IRC* [1988] S.T.C. 645).

"Transaction" or "arrangement" (Dairy Produce Quotas Regulations 1984 (SI 1984/1047) para.17(3)). A verbal arrangement which is not legally enforceable is capable of amounting to a "transaction" or "arrangement" within the meaning of this paragraph (*R. v Dairy Produce Quota Tribunal for England and Wales, Ex p. Lifely* [1988] 27 E.G. 79).

The term can attract a wider or narrower construction depending on the context. Thus Morritt J. in *Hambro v Duke of Marlborough* [1994] 3 W.L.R. 341 at 349: "the principle to which Lord Wilberforce referred applies where the wide construction, if adopted, would bring within the scope of the Act transactions which Parliament could

not have intended to be included. But in this case the wide words are not uncontrolled because of the other requirements of the section. I see no reason for the adoption of a restricted interpretation when the transaction may only be carried out if the court considers it for the benefit of the land or the beneficiaries to do so. If that condition is satisfied then there is every reason for giving the words the widest meaning they can reasonably bear". A unilateral act of imposing on land a trust for sale which freed the land and the life tenant was a "transaction" for the purposes of the Settled Land Act 1925 (c.18) s.64(2) (*Hambro v Duke of Marlborough* [1994] 3 All E.R. 332).

Stat. Def., Insolvency Act 1986 (c.45) s.436.

"Includes any agreement, arrangement or understanding, whether or not legally enforceable, and a series of transactions" (Finance Act 1998 (c.36) Sch.20 para.25(1)).

In the Consumer Credit Act 1974, "transaction" can include a transaction which takes place and is performed abroad and is governed by foreign law (*Office of Fair Trading v Lloyds TSB Bank Plc* [2007] UKHL 48).

A property adjustment order under the Matrimonial Causes Act 1973, and things done under it, may be a transaction for the purposes of s.339 of the Insolvency Act 1986 (*Hill v Haines* [2007] EWCA Civ 1284).

"Contract, dealing or transaction": see CONTRACT.

"Same transaction": see SAME.

See CARRYING OUT A TRANSACTION.

"32. As I have explained, the term 'transaction' is widely defined in s.436 as including a gift or arrangement. If it were necessary for the purposes of this decision, I would therefore be disposed to find it is broad enough to encompass a payment made by a company or by an agent of the company acting within the scope of his authority. But to focus unduly on the term 'transaction' risks obscuring the need for the second and vital element, namely the requirement that the transaction be something that the company has 'entered into'. This expression connotes the taking of some step or act of participation by the company. Thus the composite requirement requires the company to make the gift or make the arrangement or in some other way be party to or involved in the transaction in issue so that it can properly be said to have entered into it, and of course it must have done so within the period prescribed by s.240." (*Hunt (Liquidator of Ovenden Colbert Printers Ltd) v Hosking* [2013] EWCA Civ 1408.)

TRANSACTIONS IN SECURITIES. For the purpose of art.13(B)(d)(5) of Sixth Council Directive 77/388/EEC on turnover taxes, transactions in securities refers only to transactions that were likely to create, alter or extinguish parties' rights and obligations in respect of securities, and did not extend to services of an administrative nature. Negotiations in securities does not include reference to the activity of a person who without issuing documents of title performs clerical formalities of providing information and receiving and processing applications. (*CSC Financial Services Ltd v Customs and Excise Commissioners* [2002] 1 W.L.R. 2200, ECJ).

The liquidation of a company is not in itself a "transaction in securities" (*Inland Revenue Commissioners v Laird Group Plc* [2003] 1 W.L.R. 2476, HL).

TRANSCRIPT. See TENOR.

TRANSCRIPTION. "Adaptation", "arrangement" or "transcription" (Copyright Act 1956 (c.74) ss.2(5), (6), 49): see *Francis Day and Hunter v Bron* [1963] 2 W.L.R. 868. Cited REPRODUCTION.

TRANSEXUAL PERSON. Stat. Def., Equality Act 2010 s.7.

TRANSFER

TRANSFER. The operative verb “transfer” “is one of the widest terms that can be used” (per James L.J., *Gathercole v Smith*, 17 Ch. D. 1; see further per Erle J., *R. v General Cemetery Co*, 6 E. & B. 419; see TRANSFERABLE). Cp. SUBROGATION.

“Transfer of assets” (Finance Act 1936 (c.34) s.21) in the definition of settlement included an absolute and unconditional gift (*Thomas v Marshall* [1953] A.C. 543).

“Previously conveyed or transferred” (Finance Act 1938 (c.46) s.50) (*Escoigne Properties v IRC* [1958] A.C. 549).

A payment in cash to a company on a subscription for shares was not a “transfer of property” to the company within s.46 of the Finance Act 1940 (c.29), which concerns the payment of estate duty in respect of the deceased’s benefits from certain companies (*St. Aubyn v Att-Gen (No.2)* [1952] A.C. 15).

Payment to the taxpayer of the money price of an asset sold by him was held to be a “transfer of assets” to him within s.28(2)(d) and 28(i) and (ii) of the Finance Act 1960 (c.44) (*Cleary v IRC* [1968] A.C. 766).

Estate duty was not payable under s.2(1)(c) of the Finance Act 1894 (c.30), where a transfer of shares was executed more than three years before the death of the donor but was registered less than three years before his death (*Re Rose* [1952] Ch. 499).

“Conveyance or transfer operating as a voluntary disposition *inter vivos*” (Finance (1909–10) Act 1910 (c.8) s.74(1)): see *Fuller v Inland Revenue Commissioners* [1950] 2 All E.R. 976.

(Firearms Act 1968 (c.27) s.57(4).) The leaving of a shotgun at another’s house for cleaning and safekeeping while both parties were on holiday constituted a “transfer” within the meaning of this section (*Hall v Cotton* [1986] 3 W.L.R. 681).

“A transfer from one person to another of an undertaking” (Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981/1794) reg.3(1)). In order to decide whether there was a “transfer” of an “undertaking” for the purposes of this regulation an industrial tribunal would have to carry out an appraisal of all the relevant factors, with no single factor being definitive, to decide whether there was an identifiable economic unit and a transfer of that unit (*Dines v Initial Healthcare Services* [1993] I.C.R. 978). Similarly, in considering whether work contracted out by a local council involved the transfer of an undertaking within these Regulations, an industrial tribunal should take into account all surrounding circumstances to see whether there was a recognisable economic activity carried on by the transferor and continued by the new employer (*Wren v Eastbourne BC* [1993] I.C.R. 955). In considering whether work contracted out by a local council involved the transfer of an undertaking in the nature of a “Immediately before the transfer” (Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981/1794) r.5). “Transfer”, in the case of a sale, was held to refer to the whole period of a transaction from contract to final completion (*Kestongate v Miller* [1986] I.C.R. 672). But it has now been established that the date of the “transfer” for the purposes of these Regulations is the completion date (*Secretary of State for Employment v Spence* [1986] I.C.R. 651, followed by *Brook Lane Finance Co v Bradley* [1988] I.C.R. 423). See also IMMEDIATELY.

“If a ... business ... is transferred from one person to another” (Employment Protection (Consolidation) Act 1978 (c.44) Sch.13 para.17(2)). Where it was agreed in principle that various aspects of the business of a technically insolvent undertaking would be transferred to another company, and the deal was subsequently called off, it was held that there had, nevertheless, been a transfer of the business within the

meaning of this paragraph, and that therefore the continuity of employment of an employee, transferred in anticipation of the deal, had been preserved (*Dabell v Vale Industrial Services (Nottingham)* [1988] I.R.L.R. 439). See also CONTINUOUSLY.

“Transfer of the whole property in goods” (Value Added Tax Act 1983 (c.55) Sch.2 para.1(1)). To effect a transfer of the property in goods for the purposes of value added tax it is not necessary for the transferee to hold commercial venture for the purposes of these Regulations, an industrial tribunal should take into account all surrounding circumstances to see if there was a recognised economic activity carried on by the transferor and continued by the new employer (*Wren v Eastbourne BC*, *The Times*, August 18, 1993). Where one company took over the provision of services from another company as a result of competitive tendering, the business or undertaking of the first company did not come to an end so that there was a “transfer of undertaking” for the purposes of the Regulations (*Dines v Initial Healthcare Services* [1995] I.C.R. 11). In considering whether there had been a “transfer of undertaking” the court had to identify the economic activity engaged in before the alleged transfer, and compare the activities, assets and staff before and after the transfer to ascertain whether the economic entity first identified still existed. A business which consisted of labour only and where the transferor was the immediate beneficiary even though day-to-day control was exercised by another to whom the services were being provided, was capable of being transferred within the meaning of the 1981 Regulations (*Scilly Isles Council v Brintel* [1995] I.C.R. 249). There had been a “transfer of undertaking” where a third party took over responsibility for the provision of school cleaning from the council, employing 60 per cent of the existing workforce, replaced the equipment and materials and introduced new shift patterns, allocations of work, procedures and quality control systems although the council retained a degree of control over the manner in which the cleaning services were provided (*Kelman v Care Contract Services* [1995] I.C.R. 260).

(Council Directive 77/187 arts 1 and 4.) The transfer of the assets of a company in liquidation to another amounted to a “transfer” within the meaning of Directive 77/187 since the transfer was intended to ensure that the undertaking continued and the continuity of the business was assured (*Jules Dethier Equipment SA v Dassv* [1998] All E.R. 346).

“Transfer of value”: see VALUE.

“Proper instrument of transfer”: see INSTRUMENT.

“Transfer of the whole property in goods” (Value Added Tax Act 1983 (c.55) Sch.2 para.1(1)). To effect a transfer of the property in goods for the purposes of value added tax it is not necessary for the transferee to hold the goods for a measurable period of time (*Philips Exports v Customs and Excise Commissioners* [1990] S.T.C. 508).

For the purposes of arts 1 and 3 of Council Directive 77/187 relating to the safeguarding of employees’ rights in the event of transfers of undertakings, the conversion of a state-owned entity into a wholly state-owned limited liability company might constitute a transfer within the meaning. All the facts characterising the transaction had to be taken into account, including the type of undertaking or business, the transfer of assets, the transfer of the workforce, the transfer of customers, and the similarity of activities prior and subsequent to the transfer (*Viggosdottir v Iceland Post Ltd* (E3/01) [2002] 2 C.M.L.R. 18, EFTA, Court of Justice).

“Transfer of value”: see VALUE.

“Proper instrument of transfer”: see INSTRUMENT.

TRANSFER

“Transfer on sale”: see SALE.

Stat. Def., Lunacy Act 1890 (c.5) s.341; Trustee Act 1925 (c.19) s.68; Land Registration Act 1925 (c.21) ss.18 and 21; Companies Act 1948 (c.38) s.80; Firearms Act 1968 (c.27) s.57(4); Income and Corporation Taxes Act 1970 (c.10) s.482(10); Highways Act 1980 (c.66) s.235(3).

A power to transfer property does not include a power to create or grant a new property interest (*R. (Lord Chancellor) v Chief Land Registrar* [2005] EWHC 1706 (Admin)). But note that in some cases statute specifically provides in the context of transfer for the power to divide property to be transferred and thereby create new interests—see, for example, paras 5–9 of Sch.3 to the Horserace Betting and Olympic Lottery Act 2004 (c.25).

In the context of Directive 96/9 about database protection, a reference to the transfer of data is a reference to any process by which all or part of the contents of a database are to be found in a medium other than that of the original database (*Directmedia Publishing GmbH v Albert-Ludwigs-Universitat Freiburg* (C-304/07) [2009] 1 C.M.L.R. 7).

See LEGAL TRANSFER.

See ASSIGN; CONVEYANCE; DECREE; DISPOSE OF; LEGALLY; NEGOTIATE; TRANSMISSION; UNDERLEASE.

For an extensive list of earlier authorities, see STROUD’S JUDICIAL DICTIONARY, 5th EDN.

TRANSFER OF A BUSINESS. Stat. Def., Corporation Tax Act 2009 ss.421 and 674.

TRANSFERABLE. An interest which by statute or otherwise is made “not transferable” cannot be parted with either by act of parties or by operation of law (*Gathercole v Smith*, 17 Ch. D. 1). In that case, Lush L.J. said, “The word ‘transferable’ is of the widest possible import, and includes ‘every’ means by which the property may be passed from one person to another”.

“Transferable vote”: Stat. Def., Representation of the People Act 1918 (c.64) s.41(6).

TRANSGENDER IDENTITY. Stat. Def., “any of the following—

- (i) transvestism,
- (ii) transsexualism,
- (iii) intersexuality,
- (iv) having, by virtue of the Gender Recognition Act 2004 (c.7), changed gender,
- (v) any other gender identity that is not standard male or female gender identity” (Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 s.4).

TRANSHIPMENT. Due diligence in transhipment is not accomplished if the transhipment be delayed, e.g. in order to save costs of lighters or money which might have to be paid for freight; for the goods ought not to be delayed for such a reason (per Erle C.J., *Carali v Xenos*, 2 F. & F. 740).

“Partial loss from transhipment”, in a marine policy: see per Matthew J., *Pink v Fleming*, 25 Q.B.D. 396, cited CONSEQUENT.

“Risk of transhipment”: see *Australian Agricultural Co v Saunders*, L.R. 10 C.P. 668, cited INSURED ELSEWHERE.

“For transshipment only”, under s.9 of the Provisional Order in the Schedule to the Port of London (Port Rate on Goods) Provisional Order Act 1910 (c. c): see *Port of London Authority v British Oil & Cake Mills* [1915] A.C. 993.

TRANSIT. A policy of insurance against the loss of securities by the dishonesty of the employees of the firm with whom they were deposited “whilst in transit between any houses or places within 100 miles of Philadelphia” was held not to cover a loss which took place intra-murally between the vaults and the customer’s reception room: see *Pennsylvania Co, etc. v Mumford* [1920] 2 K.B. 537.

On a claim on a policy indorsed to cover goods “temporarily housed during the course of transit” it was held that goods collected together at the insured’s premises ready to be loaded on his vehicles were covered (*Crow’s Transport v Phoenix Assurance Co* [1965] 1 W.L.R. 383).

Goods on lorries which arrived at the consignee’s depot after working hours, and were taken into the depot but not unloaded, were still “in transit” within the terms of the carriage agreement (*Tomlinson (A.) (Hauliers) v Hepburn* [1966] A.C. 451).

Stat. Def., Food and Drugs Act 1955 (c.16) s.135(1).

Stoppage *in transitu*: see STOPPAGE.

See DELAY IN TRANSIT.

TRANSITIONAL ASSEMBLY. Stat. Def., Northern Ireland (St. Andrews Agreement) Act 2006 s.1.

TRANSLATION. “‘Translation’, in common sense, signifies the version out of one language into another; but in a more confined, denotes the setting from one place to another; as to remove a bishop from one diocese to another is called ‘translating’” (Cowel).

As distinguished from an imitation or adaptation, a “translation” of a book or play, within the International Copyright Acts, should be a full and faithful (not, necessarily, a literal) representation of the whole book or play, so “that the English people should have the opportunity of knowing the foreign work as accurately as it is possible to know it by the medium of a version in English” (*Wood v Chart*, L.R. 10 Eq. 193; see further *Lauri v Renad* [1892] 3 Ch. 402).

TRANSMISSIBLE. A bequest of residue to the persons who “shall become entitled to a vested transmissible interest”, means an interest “capable of transmission after death” (per Stirling J., *Re Jodrell*, 34 S.J. 129; a definition unaffected by the reversal of the judgment [1891] A.C. 304). See further *Nannock v Horton*, 7 Ves. 402.

TRANSMISSION. “Transmission” of the property in a ship, other than by transfer (Merchant Shipping Act 1854 (c.104) s.58; Merchant Shipping Act 1894 (c.60) s.27 means “transmission by operation of law, unconnected with any direct act of the party to whom the property is transmitted”; and therefore “a sale by licitation is not such a transmission” (*Chasteauneuf v Capeyron*, 7 App. Cas. 127).

So, “transmission” of company shares is effected by devolution of law, as distinguished from a “transfer”, which is accomplished by the act of parties; and therefore where Table A, Companies Act 1862 (c.89), applied simpliciter, a trustee in bankruptcy was not subject to art.10 of that table (*Re Bentham Mills Co*, 11 Ch. D. 900), and the trustee was entitled to be entered upon the register in the same way, and to have the certificate in the same form, as the bankruptcy (*Re Key* [1902] 1 Ch. 467); see now Table A, Companies Act 1948 (11 & 12 Geo. 6, c.38). See TRANSFER.

“Transmission of the goods”, in an exception in a bill of lading: see *Hayn v Culliford*, 3 C.P.D. 417, 418, affirmed 4 C.P.D. 182.

TRANSMITTER

A foreign executorship created no "transmission of interest or liability" within Judicature Rules 1875 Ord.50 r.4; representation has to be obtained in England (per North J., *Morrice v Smart*, 26 S.J. 752, repudiating the inaccurately reported decision in *Jameson v Marshall*, 46 L.T. 480). A bankruptcy receiving order against a party to an action did not cause such "a change or transmission of interest or liability" so as to require the addition of the official receiver as a party (*Re Berry* [1896] 1 Ch. 939).

"Transmission machinery" (Factories Act 1937 (c.67) s.152, now Factories Act 1961 (c.34) s.176). Machinery which is covered by this definition does not cease to be transmission machinery when the motive power is cut off (*Thomas (Richard) & Baldwins v Cummings* [1955] A.C. 321). A hydraulic accumulator was not "transmission machinery" (*Weir v Andrew Barclay & Co* (O.H.) 1955 S.L.T. (Notes) 56).

Stat. Def., Wireless Telegraphy (Explanation) Act 1925 (c.67) s.1; Trade Marks Act 1938 (c.22) s.68; Copyright Act 1956 (c.74) s.48(3).

"Transmission line": see Electricity (Supply) Act 1926 (c.51) s.51.

"Transmission machinery": Stat. Def., Factories Act 1961 (c.34) s.176(1).

TRANSMITTER. Stat. Def., Northern Ireland (Emergency Provisions) Act 1996 (c.22) s.20(9).

Stat. Def., Justice and Security (Northern Ireland) Act 2007 Sch. 3 para.1(3).

TRANSPORT. "Transport of passengers" (Finance Act 1972 (c.41) Sch.4 Group 10 Item 4) does not cover the provision of rides on a "big dipper" in a fun fair (*Customs and Excise Commissioners v Blackpool Pleasure Beach Co* [1974] 1 W.L.R. 540). Payments by students for cards entitling them to reduced rate rail travel were held to be advance part-payment for the service of "transport of passengers" within the meaning of this item (*British Railways Board v Customs and Excise Commissioners* [1977] 1 W.L.R. 588).

(EC Council Directive 77/388 (Sixth Directive) art.9(2)(d).) An ocean-going yacht is a form of "transport" for the purposes of this Directive notwithstanding its primary use for sporting purposes (*Hamann v Finanzamt Hamburg-Eimsbuttel* (Case 51/88) [1991] S.T.C. 193).

TRANSPORTATION. For the meaning and effect of the punishment of transportation and its regulations, see Transportation Acts 1824 (c.84) and 1825 (c.69), and 1852 (c.99) s.15; *Bullock v Dodds*, 2 B. & Ald. 258; Jacob.

TRAP. A visitor who goes on to premises upon business which concerns the occupier and upon his invitation, express or implied, and who uses reasonable care on his part for his own safety is entitled to expect that the occupier shall on his part use reasonable care to prevent injury from unusual danger which he knows or ought to know (*Indermaur v Dames*, L.R. 1 C.P. 274, 288; affirmed, L.R. 2 C.P. 311).

The duty of the invitor towards the invitee is to use reasonable care to prevent damage from unusual danger which he knows or ought to know. If the danger is not such that he ought to know of it, his liability does not extend to it (per Buckley L.J., in *Norman v Great Western Railway* [1915] 1 K.B. 584, 592; *Mersey Docks, etc. Board v Procter* [1923] A.C. 253).

The words "unusual danger" in *Indermaur v Dames* means a danger unusual for the particular person, and the word "unexpected" might avoid misapprehension (per Phillimore L.J., in *Norman v Great Western Railway*).

There is no distinction between that which has been called a trap and ordinary actionable negligence, except so far as the word "trap" may be used to designate a

negligent act which is calculated to mislead a person using ordinary care and caution (per Lopes J., *Watkins v Great Western Railway*, 46 L.J.Q.B. 817, 822; *Sutcliffe v Clients Investment Co*, 94 L.J.K.B. 113).

A trap is a concealed source of mischief (per Denman J., *White v France*, 46 L.J.C.P. 823).

In *Latham's Case* Hamilton L.J. (416) said: "There the presence in a frequented place of some object of attraction, tempting him (a child) to meddle where he ought to abstain, may well constitute a trap, and in the case of a child too young to be capable of contributory negligence it may impose full liability on the owner or occupier, if he ought as a reasonable man to have anticipated the presence of a child and the attractiveness of the peril of the object"; see also *Cooke v Midland Railway Co of Ireland* [1909] A.C. 229; *Mercer v South Eastern Railway Co's Managing Committee* [1922] 2 K.B. 549; *Coleshill v Lord Mayor, Aldermen and Citizens of the City of Manchester* [1928] 1 K.B. 776.

See also *Latham v Johnson (Richard) and Nephew Ltd* [1913] 1 K.B. 398, cited LICENSEE; *Glasgow Corp v Taylor* [1922] 1 A.C. 44, and cases there cited; *Addie & Sons (Collieries) v Dumbreck* [1929] A.C. 359.

See also ALLUREMENT.

TRAVEL. "'Travelling', in a large sense, means a going from one place to another" (per Ellenborough C.J., *White v Beazley*, 1 B. & Ald. 171); therefore, a coach and horses hired to take a party from Portsea to the theatre at Portsmouth (a distance of two miles upon a public road) was held a "travelling" within s.8 of the Post Horse Duties Act 1808 (c.98); and so of a chaise and horses hired to take a party out to dinner and fetch back (same case; see further *Ramsden v Gibbs*, 1 B. & C. 319). See TRAVELLER.

"Travelling as an ordinary passenger": see *M'Millan v Sun Life Assurance*, 4 Sc. L.T. 66, BICYCLE.

"Travelling" (Regulation of Railways Act 1889 (c.57) s.5). A person is still "travelling" for the purpose of s.5 after he has alighted from his train and before he passes the ticket barrier (*Bremme v Dubery* [1964] 1 W.L.R. 119).

"Travel" (London Transport Board By-Laws No.8(1)). A person is still travelling when he arrives at the ticket barrier at his destination (*Murphy v Verati* [1967] 1 W.L.R. 641).

"Travels . . . on foot" (Pedlars Act 1871 (c.96) s.3). A man who goes to a fixed point by car and proceeds to go from house to house on foot is "travelling" within the meaning of this section (*Sample v Hulme* [1956] 1 W.L.R. 1319).

As to County Court Rules 1936 Ord.25 r.43, which deals with the case of a debtor living outside the district of a county council which he is ordered to attend, the words "travelling expenses" mean a sum sufficient to pay for the debtor's journey from his house to the court and back again and not merely to the court: see *Ward v Nield* [1917] W.N. 257.

"Travelling crane": see OVERHEAD.

"Travelling post": see POST.

"Travelling road" (Coal Mines Act 1911 (c.50) s.49): see ROAD.

"Travelling showman": see SHOWMAN.

TRAVEL AUTHORISATION. Stat. Def., Football Spectators Act 1989 s.22A(1) as amended by Identity Cards Act 2006 s.39.

TRAVEL DOCUMENT. Stat. Def., Specialist Printing Equipment and Materials (Offences) Act 2015 s.2.

TRAVERSE. To traverse; “‘traverse’ sometimes signifieth to deny, sometimes to overthrow or undoe a thing done” (Termes de la Ley, *Travers*, which see for illustrations; see also Cowel; Jacob).

Particulars will be ordered of a traverse of a negative allegation if the traverse is a negative pregnant amounting to an affirmative allegation; but traverse of a negative allegation does not necessarily amount to more than a mere denial putting the other party to proof. The whole matter discussed: *Pinson v Lloyds & National Provincial Foreign Bank Ltd* [1941] 2 K.B. 72.

See TOLL TRAVERSE.

TRAWLING. “A steam trawler dragging her trawl along the bottom of the sea” is “engaged in trawling” (per Evans P., *The Grovehurst* [1910] P. 316, cited STATIONARY).

TREAD. “Tread”; “tread pattern” (Motor Vehicles (Construction and Use) Regulations 1973 (SI 1973/24) reg.99(1)(f)). The “tread” of a tyre is that part in contact with the road in normal driving conditions. “Tread pattern” does not include an area of flat rubber so that the “tread pattern”, for the purposes of this section, stops where there is not more pattern to probe or measure (*Sandford v Butcher* [1978] R.T.R. 132).

TREASON. “‘Treason’ is in two manners, that is to say, graund treason, and petit treason” (Termes de la Ley). Grand treason: see HIGH TREASON. “‘Petit treason’ is when a servant kills his master, a wife her husband; or when a secular or religious man kills his prelate or superior to whom he owes faith and obedience; and in how many other cases petit treason may be committed, see Crompton’s Justice of the Peace” (Cowel). Petit treason is now “deemed to be murder only, and no greater offence” (Offences against the Person Act 1828 (c.31) s.2).

Treason felony: see Treason Felony Act 1848 (c.12), especially s.3; on which see *Mulcahy v The Queen*, L.R. 3 H.L. 306.

A person may be guilty of treason for an act committed outside the realm if he is an alien holding a British passport (*Joyce v DPP* [1946] A.C. 347).

TREASURE TROVE. “‘Treasure trove’ is when any money, gold, silver, plate, or bullion is found in any place, and no man knoweth to whom the property is, then the property thereof belongeth to the King, and that is called ‘treasure trove’, that is to say, treasure found. But if any mine of metall be found in any ground that always pertaineth to the lord of the soile, except it be a mine of gold or silver, which shall be always to the King, in whose ground soever they be found” (Termes de la Ley). See further 1 Bl. Com. 295; Jacob; MINE.

“Several definitions of treasure trove have been cited to me, not substantially differing one from another. I will take that stated in Chitty on Prerogative, p.152: ‘Treasure trove is where any gold or silver—in coin, plate, or bullion—is found concealed in a house, or in the earth, or other private place, the owner thereof being unknown, in which case the treasure belongs to the King, or his grantee having the FRANCHISE of treasure trove; but if that laid it be known, or afterwards discovered, the owner, and not the King, is entitled to it; this prerogative right only applying in the absence of an owner to claim the property. If the owner, instead of hiding the treasure, casually lost it, or purposely parted with it in such a manner that it is evident that he intended to abandon the property altogether and did not purpose to resume it on

another occasion, as if he threw it on the ground or other public place or in the sea, the first finder is entitled to the property as against every one but the owner, and the King's prerogative does not in this respect obtain'. So that it is the 'hiding', and not the abandonment of the property that entitles the King to it" (per Farwell J., *Att-Gen v British Museum* [1903] 2 Ch. 598). See further FRANCHISE; cp. ROYALTIES.

In the case of *Att-Gen of The Duchy of Lancaster v Overton (Farms)* [1980] 3 W.L.R. 869 the court preferred the opinions of *Termes de la Ley*, Sir Edward Coke (Third Institute), J. Chitty (Prerogatives of the Crown) and Mr Justice Chitty in *Elws v Brigg Gas Co* (1886) 33 Ch. D. 562, 567 to those of Bracton and Blackstone, and confirmed that the crown's prerogative is restricted to coin, plate or bullion made of gold or silver only. The court also held that Roman coins containing no more than 5.85 per cent silver were not "silver" and therefore not "treasure trove". This decision was confirmed by the Court of Appeal ([1982] 2 W.L.R. 397).

As to the offence of concealing treasure trove, see Steph. Cr. (9th edn) 365.

The jurisdiction of the coroner is limited to inquiring who was, or was suspected to be, the finder of the treasure (*Att-Gen v Moore* [1893] 1 Ch. 676).

TREASURER. "Any treasurer, collector, officer, or other person, appointed" by a local authority to sue, included a banker; and in no special mode of appointment was prescribed, his employment was equivalent to appointment (*Frost v Bolland*, 5 B. & C. 611). Cp. *Williams v Golding*, L.R. 1 C.P. 69, cited OTHER.

As to the position of a treasurer of a municipal borough, see *Att-Gen v De Winton* [1906] 2 Ch. 106.

The treasurer of a friendly society was not, as such, its "clerk or servant" within s.68, Larceny Act 1861 (c.96) (*R. v Tyree*, L.R. 1 C.C.R. 177). The office could not be filled by an incorporated company; if in fact such a company had been the treasurer, the winding-up of the company was not an "insolvency" so as to entitle the society to the preference given by s.15(7) of the Friendly Societies Act 1875 (c.60) (*Re West of England & South Wales District Bank*, 11 Ch. D. 768). See further *Barrett v Markham*, L.R. 7 C.P. 405, cited WITHHOLD.

TREAT. A notice to treat (Lands Clauses Consolidation Act 1845 (c.18) s.18; see now Compulsory Purchase Act 1965 (c.56) s.5) is an inchoate contract for the sale and purchase of the land included in it, which becomes consummate when the price is fixed by agreement, arbitration, or the verdict of a jury (per Cottenham C., *Adams v London & Blackwall Railway*, 19 L.J. Ch. 559, 560; *Harding v Metropolitan Railway*, 7 Ch. 158); when given, the owner can compel its consummation (*Harding; Fotherby v Metropolitan Railway*, L.R. 2 C.P. 188).

The owner is entitled to the value of the property as at the date of the notice to treat (*Phœnix Assurance v Spooner* [1905] 2 K.B. 753); on that value being ascertained, the company of body giving the notice may be required to take a conveyance of the property (*Re Cary-Elwes* [1906] 2 Ch. 143). But any interest in such land, or in any land of the owner adjoining thereto, acquired by, or from, the owner subsequently to the notice to treat, is not a subject for compensation (*Wilkins v Birmingham*, 25 Ch. D. 78; *Mercer v Liverpool, etc. Railway* [1903] 1 K.B. 652; [1904] A.C. 461, on which last case see *Dawson v Great Northern & City Railway* [1905] 1 K.B. 260, cited CHOSE IN ACTION). See hereon *Zick v London United Tramways* [1908] 2 K.B. 126. Cp. *Re Bwlfa, etc. Collieries and Pontypridd Water-works Co* [1901] 2 K.B. 805, cited FULL COMPENSATION, and *Fletcher v Lancashire & Yorkshire Railway*, and *Richard v Great Western Railway* [1902] 1 Ch. 909, cited POSSESSION.

TREAT

As to withdrawing the notice to treat and giving a fresh one, see *Ashton Vale Iron Co v Bristol* [1901] 1 Ch. 591; *Cardwell v Midland Railway*, 21 T.L.R. 22. See further under Taylor's Act, *Wild v Woolwich* [1910] 1 Ch. 35. See COMPULSORY POWERS; PUT IN FORCE.

"Treated as a market garden", under s.48 of the Agricultural Holdings Act 1923 (c.9): see *Re Masters and Duveen's Arbitration* [1923] 2 K.B. 729. See now Agricultural Holdings Act 1948 (c.63) s.67.

"Treated the petitioner with cruelty" (Judicature Act 1925 (c.49) s.176; Matrimonial Causes Act 1950 (c.25) s.1(1)(c); Matrimonial Causes Act 1965 (c.72) s.1(1)(iii)) indicated conduct aimed at the offended spouse; this was in contrast to the earlier Acts, which used the phrase "guilty of cruelty" (*Kaslefsky v Kaslefsky* [1951] P. 38). "Treated" connoted a conscious act, see *Swan v Swan* [1953] P. 258.

"Treated . . . as a child of their family" (Matrimonial Proceedings and Property Act 1970 (c.45) s.27(1)(b), now Matrimonial Causes Act 1973 (c.18) s.52): see CHILD, CHILDREN.

"Notice to treat": Stat. Def., Compulsory Purchase Act 1965 (c.56) s.5.

TREAT AND VIEW. An advertisement inviting applications for purchase to be made to A "to treat and view", gives A "authority to negotiate and to make and receive proposals, but not to conclude a sale" (per Bovill C.J., *Godwin v Brind*, L.R. 5 C.P. 299, fn.). Cp. INTRODUCE; PROCURE.

See VIEW.

TREATMENT. National Insurance Act 1911 (c.55): see *Bennet v Scottish Board of Health* [1921] S.C. 772.

"Treatment" (National Health Service Act 1946 (c.81) s.79(1)) includes nursing and not only medical and dental treatment by a doctor or dentist (*Minister of Health v Royal Midland Counties Home for Incurables at Leamington Spa General Committee* [1954] Ch. 530; [1954] 2 W.L.R. 755; [1954] 1 All E.R. 1013).

"Treatment advice or attendance in connection with the fitting of artificial teeth" (Dentists Act 1921 (c.21) s.14(2)). Taking impressions for the purpose of mending a split dental plate was held to be "treatment" within the meaning of this section (*Almy v Thomas* [1953] 1 W.L.R. 1296). But in another case the repair of a denture was held not to be "treatment, advice and attendance" within the meaning of this section (*Twyford v Puntschart*, 63 T.L.R. 329).

"Such other forms of treatment" (Mental Health Act 1983 (c.20) s.57(1)(b)). Treatment by administering the drug gosevelin by injection using a conventional hypodermic syringe would not, within the ambit of this section, be covered by the phrase "such other forms of treatment" (*R. v Mental Health Commission, Ex p. W*, *The Times*, May 27, 1988).

Article 3 of the European Convention on Human Rights says "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". "The absolute and unqualified prohibition on a member state inflicting the proscribed treatment requires that 'treatment' should not be given an unrestricted or extravagant meaning. . . . The proscribed deportation could fairly be described as 'treatment'. An analogy might be found in the present case if a public official had forbidden the provision to Mrs Pretty of pain-killing or palliative drugs. But here the proscribed treatment is said to be the Director [General of Public Prosecution]'s refusal of proleptic immunity from prosecution to Mr Pretty if he commits a crime. By no

legitimate process of interpretation can that refusal be held to fall within the negative prohibition of art.3.” (*R. (Pretty) v DPP* [2001] 3 W.L.R. 1598, HL; [2002] 1 All E.R. 1, HL.)

The imposition of a regime which prohibits asylum-seekers from working and prohibits the grant to them of support, albeit inaction and not action, is capable of amounting to “treatment” for the purposes of art.3 of the European Convention on Human Rights. See *R. (Q) v Secretary of State* [2003] 3 W.L.R. 365, CA.

Stat. Def., “includes a diagnostic or other procedure” (Mental Capacity Act 2005 (c.9) s.64).

“Process or treatment”: see PROCESS.

Stat. Def., National Health Insurance Consolidated Regulations 1924 Pt I; Medicines Act 1968 (c.67) s.132.

For the meaning of the concept of medical treatment in the context of abortion see *Doogan, Re Judicial Review* [2012] ScotCS CSOH 32.

TREATMENT TOGETHER. A couple could not be said to be being treated together once they had separated and had no relationship: so consent given to treatment together lapsed (*Evans v Amicus Healthcare Ltd* [2004] 2 W.L.R. 713 Fam. Appeal dismissed [2004] EWCA Civ 727).

See also TOGETHER.

TREATY. The “Treaty on European Union” referred to in the European Communities (Amendment) Act 1993 (c.32) s.1 meant the whole of the Union Treaty including the protocols (*R. v Secretary of State for Foreign and Commonwealth Affairs, Ex p. Rees-Mogg* [1994] 1 All E.R. 457).

Stat. Def., International Copyright Act 1886 (c.33) s.11; Monopolies and Mergers Act 1965 (c.50) s.4(4); European Communities Act 1972 (c.68) s.1(4).

TREE. “6. I note that part of the evidence submitted in the appeal on behalf of the Claimant by Julian Forbes-Laird, an expert arboriculturalist, criticised the TPO’s description of W2, ‘all trees of whatever species’ for using ‘excruciatingly vague language’ (see rebuttal proof paragraphs 3.4.2–3.4.3). Ignoring the hyperbole, the short answer is that the description was not legally uncertain. The order meant exactly what it said. Any specimen qualifying as a ‘tree’ fell within the scope of the restrictions contained in the TPO. In any event, as emerged during oral argument in this appeal, there was no real issue before the Inspector as to what should be understood in the legislation by the word ‘tree’. There should not have been any doubt therefore as to the obligations imposed by the TPO before the Claimant gave instructions for works to be carried out. . . .

12. The Act does not contain a definition of ‘tree’. The issue raised by the Claimant concerning the extent to which the definition applies to young specimens (to use a neutral word) applies just as much to section 197 as to sections 198 and 206 to 208. A restrictive approach as to what may be considered to be a ‘tree’ would not only affect the scope of the protection afforded by TPOs, but also the ambit of the local planning authority’s power to require the preservation or planting of trees when determining planning applications. . . .

39. The Claimant accepts that the word ‘tree’ includes saplings, but argues that it does not include seeds or seedlings. It is submitted that in so far as Cranston J suggested otherwise in *Palm Developments Limited v Secretary of State for Communities and Local Government* [2009] 2 P. & C.R. 16 his judgment was incorrect

and should not be followed. It is submitted that the same error was made in the Council's evidence and in the Inspector's decision. . . .

45. Mr Boyle Q.C. criticised the evidence of Ms Leonard on behalf of the Council for treating seedlings as falling within the definition of 'tree' (see paragraphs 4.4 and 4.7). He also criticised references to the seed bearing trees in the vicinity. But on a fair reading the Council's evidence did not rely upon mere seeds as such, but on the likelihood of seedlings and saplings having developed in the W2 area (see e.g. Willow and Ash can seed prolifically preceded by the phrase 'there may have been plenty of seedlings/saplings on site prior to the clearance works'.

46. In his main proof Mr Forbes-Laird did not deal with the 'young tree' issue. Even more telling, in point 3 of paragraph 3.3 of his rebuttal, Mr Forbes-Laird quoted Ms Leonard's reference to 'seedling/saplings on site prior to the clearance works' and did not make any criticism at all of her inclusion of seedlings. Similarly, he did not raise the point that seedlings should be excluded from 'trees' because of the inability to differentiate them from the scrub in sense of 'stunted forest growth'. His response at paragraphs 3.6.1 to 3.6.4 simply asserted that there were no young trees in the cleared area relying upon the declaration of Mr Logsdon which was defective in this respect.

47. Mr Boyle Q.C. accepted that paragraph 8 of the Inspector's decision letter, summarising the relevant part of the decision on *Palm*, was impeccable. It refers to 'saplings' as 'trees'. Mr Boyle accepted that ground 2 depends upon the four words in the first sentence of paragraph 9 of the decision letter which follow the reference to 'saplings', namely 'or other potential trees'. He submitted that the Inspector had been influenced by the Council's reference to 'seedlings' and that the word 'potential' indicated that he was taking into account specimens which had not become trees.

48. Ground 2 is untenable. The Inspector was entitled to produce a decision letter with reasons briefly stated and addressed to an audience familiar with the arguments and points. The position facing the Inspector was that the Claimant did not disagree with the Council's use of the term 'seedlings/saplings'. The Inspector was entitled to rely upon that uncontroversial position. The words 'and other potential trees' should not be read as referring to specimens which are not trees at all, but simply to the unchallenged 'seedlings/saplings' term used by the Council. For these reasons I reject ground 2." (*Distinctive Properties (Ascot) Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 729 (Admin).)

"The problem arises because of the absence of any definition of 'tree' in the Act. No case appears to have followed Lord Denning MR's suggestion in *Kent County Council v Batchelor* (1976) 33 P&CR 185 that in woodland a tree 'ought to be something over seven or eight inches in diameter' (page 189), some 178 – 203 mm, and the appellant does not seek to rely on it. It was clearly an obiter comment and was departed from, rightly in my view, in both Bullock and Palm Developments. It is also inconsistent with regulations made under the Act, whereby actions in respect of trees in conservation areas which would otherwise be prohibited are exempt if the 'trees' in question are no more than 75mm (about 3 inches) in diameter: see Town and Country Planning (Tree Preservation) (England) Regulations 2012, regulation 15. Clearly, therefore, one can have trees with a diameter below 75mm.

38. In the Palm Developments case, Cranston J in a careful and comprehensive judgment examined this issue in some detail. He looked at a number of dictionary definitions of 'tree' and other entities, including the definition of 'sapling' in the New Oxford Dictionary of English: 'a young tree, especially one with a slender trunk'

([23]). He emphasised that where in other legislation, such as the Forestry Act 1967, Parliament had intended a minimum size to apply to trees, it has done so expressly, and in addition had done so in the regulations about trees in conservation areas. He attached weight to the fact that such provisions were absent in the case of TPOs. As a result, he concluded that 'saplings of whatever size are protected by a woodland tree preservation order': [40]. . . . It is of course right that Cranston J was not being asked to consider in express terms whether a seedling was a 'tree', which enables Mr Boyle to adopt the position that he does not quarrel with the judge's conclusions about saplings. He argues that there must be a point where a seedling has not become a sapling, even though biologically the two are of the same species. Not everything that is of a tree species is a tree. A sprouting acorn, he submits, could not be considered a tree, nor could a mere seed. It is contended that a seedling of a tree species 'needs a chance to demonstrate that it is going to be a tree', as opposed to a bush or scrub, and that that is only achieved when the plant (to use a neutral term) can be regarded as a sapling. He accepts, however, that there are no minimum size requirements. . . . Like Holgate J, I am not at all sure that this court is required to make a definitive pronouncement as to whether a seedling is a tree. It is not in dispute that a seed is not but that a sapling is. But the inspector was never asked to decide whether a seedling is a tree, because the Council's inclusion of 'seedlings/saplings' was not put in issue before him by the appellant. Of course, the word 'tree' is to be found in the Act and thus its meaning must be, at least in part, a matter of law. Insofar as it is necessary to determine the meaning, I would accept the approach adopted by Cranston J in *Palm Developments*, namely that a tree is to be so regarded at all stages of its life, subject to the exclusion of a mere seed. A seedling would therefore fall within the statutory term, certainly once it was capable of being identified as of a species which normally takes the form of a tree. This would accord with the purpose of a woodland TPO in seeking to protect a woodland over a period of time as trees come and go, as they die and as they are regenerated. Mr Boyle's submission that a seedling is not a tree was, in my view, more of a bare assertion rather than an argument based upon any coherent principle. If a sapling, whatever its size, is to count as a tree, as the appellant accepts, what reason is there for excluding a seedling of the same species? If a young oak plant some 0.6m/2 feet in height is within the meaning of the word 'tree', as the appellant again accepts, why is not an even younger oak plant of, say, 0.3m/1 foot height? The definition of 'seedling' in the Concise Oxford Dictionary is 'plant raised from seed and not from cutting, etc.' If the 'plant' is of a tree species, I can see no reason why it should be excluded from the meaning of the word 'tree'. Indeed, in the context of a woodland TPO, a purposive construction of the statutory language would include such a plant, because one is seeking to preserve the woodland which means preserving the trees 'at all stages' of their lives, as Cranston J put it, so that natural regeneration could take place.

43. It must, of course, be the case that the word 'tree' in Part VIII of the Act has the same meaning, whether one is dealing with a woodland TPO or a TPO which identifies individual trees. In theory, therefore, it might seem that it would be open to a local planning authority, if the above conclusion is right, to seek to impose a TPO on an individual seedling 'in the interests of amenity'. That, however, is not an argument of any validity. Any attempt to do so would fail, not because the seedling fell outside the legal concept of a tree but because it would be perverse of the authority to seek to use its power in that way. Moreover, the same argument could be applied with as much

(or in reality as little) force to a small sapling. Yet the appellant accepts that a small sapling is within the meaning of 'tree' and so in theory could be potentially subject to an individual form of TPO. In the same way, Cranston J rightly rejected arguments in Palm Developments about potential offences of trampling on shoots or snapping the branch of a young sapling. As he said, in practice any difficulty would be met by the exercise of prosecutorial discretion ([41]).

44. Therefore, insofar as the Council and then the inspector relied upon the inclusion of 'seedlings/saplings' when arriving at an estimate of the number of trees on site before the clearance, I am not persuaded that they erred in law." (*Distinctive Properties (Ascot) Ltd v Secretary of State for Communities and Local Government* [2015] EWCA Civ 1250.)

TREES. "Where the grant is of all a man's 'trees', there shall pass no more of the soil but so much as shall serve for the nutriment of the trees, and the owner of the soil shall have the grass growing thereupon also" (Touch. 95). See WOOD.

"The word 'trees', generally speaking, means wood applicable to buildings, and does not include orchard trees" (per Littledale J., *Bullen v Denning*, 5 B.& C. 851); and an exception in a lease of "trees", "means trees useful for their wood" (per Mansfield C.J., *Wyndham v Way*, 4 Taunt. 318), and will not, as a rule, extend to "fruit" trees, unless specially named; and neither an exception nor a grant of "timber trees and other trees" will pass fruit trees (*Bullen v Denning*, above, which see for the cases hereon), even though the phrase goes on to say "but not the annual fruit thereof", for "fruit", there, refers to the mast of timber trees (*Bullen*). See FRUIT; TIMBER.

"Trees", insofar as they can be the subject of a preservation order under s.60 of the Town and Country Planning Act 1971 (c.78), can include a coppice. It was here held that a preservation order on a coppice was valid, notwithstanding the fact that by definition a coppice has regularly to be cut and pruned (*Bullock v Secretary of State for the Environment* (1980) 254 E.G. 1097).

"Overhanging trees": see LOP. See further NUISANCE.

"Tree preservation order": Stat. Def., Town and Country Planning Act 1947 (c.51) s.28(1); Town and Country Planning Act 1971 (c.78) s.60.

TRESPASS. "'Trespass' signifies any transgression of the law under treason, felony, or misprision of either" (Cowel; see further Jacob).

"A trespass is an injury committed with violence; and this violence may be either actual or implied; and the law will imply violence, though none is actually used, where the injury is of a direct and immediate kind, and committed on the person, or tangible and corporeal property, of the plaintiff. Of actual violence, an assault and battery is an instance; of implied, a peaceable but wrongful entry upon the plaintiff's land" (Stephen on Pleading, Ch.1). See hereon *Scott v Shepherd*, 1 Sm. L.C. 480; Rosc. N.P. (20th edn), 916 et seq.

(Limitation Act 1939 (c.21) s.2(1)(a) proviso, added by the Law Reform (Limitation of Actions, etc.) Act 1954 (c.36) s.2(1).) An action for trespass to the person is an action for "breach of duty" within the proviso and is therefore statute-barred after three years. Actions for unintentional personal injuries should now, however, be founded on negligence (*Letang v Cooper* [1964] 3 W.L.R. 573).

The placing of posters on street furniture and council buildings without proper authority amounts to trespass (*Hackney LBC v Arrowsmith*, Shoreditch County Court, April 19, 2002).

"Trespass on the case": see CASE.

“Action of trespass *de bonis asportatis*”: see TROVER.

See WILFULLY TRESPASS.

TRESPASSER. “Trespasser” (Theft Act 1968 (c.60) s.9(1)(a)(b)). A person enters premises as a trespasser within the meaning of this section if he enters knowing that he is a trespasser or else reckless as to whether he is a trespasser or not. A person who has general permission to enter particular premises (as, in this case, the son of the owner) may nevertheless be a “trespasser” if he enters knowing that he is acting in excess of such general permission, or being reckless as to whether he is so acting (*R. v Jones (John)*; *R. v Smith (Christopher)* [1976] 1 W.L.R. 672). A person who entered into a counter area on a sales floor of a department store was held to be a “trespasser” for the purposes of this section (*R. v Walkington* [1979] 1 W.L.R. 1169).

Stat. Def., Public Order Act 1986 (c.64) s.39.

TRIAL. A “trial” is the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal. Therefore, the hearing of the reference of an action “and all matters in difference” is not a trial within Attendance of Witnesses Act 1854 (c.34) s.1 (*Hall v Brand*, 12 Q.B.D. 39; but see *Munday v Norton* [1892] 1 Q.B. 403, and *Patten v West of England Iron Co* [1894] 2 Q.B. 159, both cited ARBITRATION). But an indictment for non-repair of a highway was “tried” within s.95 of the Highway Act 1835 (c.50), if the defendants pleaded guilty (*R. v Haslemere*, 32 L.J.M.C. 30). It was held that an assessment of damages by a jury on a judgment by default was not a trial within the old R.S.C. Ord.65 r.1 (*Gath v Howarth*, 28 S.J. 427). Such an assessment was a trial within s.1 of the Judicature Act 1890 (c.44) (*Radam's Microbe Killer v Leather* [1892] 1 Q.B. 85).

The trial (Criminal Justice Act 1948 (c.58) s.23(1)) was not complete until sentence had been passed or the offender had been ordered to be discharged (*R. v Grant* [1951] 1 K.B. 500).

The hearing of a summons under s.10 of the Companies (Winding-up) Act 1890 (c.63) (cp. Companies Act 1948 (c.38) s.270), was not “the hearing or trial of an action upon notice”, so as to entitle a solicitor to the fee for instructions for brief, under the old R.S.C. App. N Item 81 (*Re Anglo-Austrian Printing Union* [1894] 2 Ch. 622); but it was a matter within the old R.S.C. Ord.65 r.27 (*ibid.*). Such a summons if not a “trial of an action” was, semble, a “trial of an issue of fact” within Item 81 (*Re Consolidated Exploration Co* [1899] 2 Ch. 599), in which case the fee was allowed on a question upon a guarantee which was directed to be tried without even a summons being taken out.

“Trials” in a marine insurance: see *Jackson v Mumford*, 20 T.L.R. 172.

To constitute a “trial” within Common Law Procedure Act 1852 (c.76) s.212 there must be an effective trial binding on all necessary parties, and an effective judgment binding on all necessary parties, so that where judgment for possession has been signed against one only of two joint tenants there has not been such a trial (*Gill v Lewis* [1956] 2 Q.B. 1).

“At the trial or hearing of the action, course or matter” (Legal Aid (General) Regulations 1962 (No.148) reg.18(1)). These words refer to the final determination of the matter and do not cover preliminary applications (*Wozniak v Wozniak* [1953] P. 179). The dismissal of an action for want of prosecution is not within the regulation (*Cope v United Dairies (London) Ltd* [1963] 2 W.L.R. 926).

“The trial or first trial in any matrimonial proceedings” (Domicile and Matrimonial Proceedings Act 1973 (c.45) Sch.1 para.9(1)) means the trial of issues in the main suit,

and would not relate to a hearing as to custody or ancillary relief (*Thyssen-Bornemisza v Thyssen-Bornemisza* [1985] 1 All E.R. 328).

“Trial or hearing” (Magistrates’ Courts Act 1980 (c.43) s.121(1)). When a person is arrested and brought before a magistrate for breach of bail under s.7 of the Bail Act 1976 (c.63), this is not a “trial or hearing” within the meaning of s.121(1) (*R. v Liverpool City Justices, Ex p. DPP* [1992] 3 W.L.R. 20).

(Magistrates’ Courts Act 1980 (c.43) s.6.) The words “for trial” in s.6(3)(b) were to be interpreted as meaning “for the purposes of trial” and any bail granted by the magistrates ended if the defendant surrendered himself into custody at arraignment or at any other hearing before the Crown Court (*R. v Maidstone Crown Court, Ex p. Jodka, The Times*, June 13, 1997).

A reference to “trial” in an enabling provision in statute was intended to embrace all hearings which form an integral part of the trial process, because it would have made no sense in that context if rules had not been able to make provision in relation to orders in proceedings ancillary to trials (*Ex p. Guardian Newspapers Ltd* [1999] 1 W.L.R. 2130, CA).

The word “trial”, in the context of provision about deliberately absenting oneself from trial, refers to the hearing of a case and not to the entirety of the legal process (*Government of Albania v Blea* [2005] EWHC 475 (Admin)).

“Relating to trial on indictment”: see RELATING.

“Trial of an information” (Magistrates’ Courts Act 1952 (c.55) s.104): see INFORMATION.

For discussion of the definition of “trial”, and in particular when it begins, see *Lord Chancellor v Ian Henery Solicitors Ltd* [2011] EWHC 3246 (QB); see, in particular: “For all these reasons I have reached the clear conclusion that, contrary to the decision of the Costs Judge, this was indeed a cracked trial, because the case did not ‘proceed to trial’ in the requisite sense. The fact that the jury had been sworn was only one of the relevant factors to be considered. There was no trial in any meaningful sense. I would summarise the relevant principles as follows: (1) Whether or not a jury has been sworn is not the conclusive factor in determining whether a trial has begun. (2) There can be no doubt that a trial has begun if the jury has been sworn, the case opened, and evidence has been called. This is so even if the trial comes to an end very soon afterwards through a change of plea by a defendant, or a decision by the prosecution not to continue (*R v Maynard, R v Karra*). (3) A trial will also have begun if the jury has been sworn and the case has been opened by the prosecution to any extent, even if only for a very few minutes (*Meek and Taylor v Secretary of State for Constitutional Affairs*). (4) A trial will not have begun, even if the jury has been sworn (and whether or not the defendant has been put in the charge of the jury) if there has been no trial in a meaningful sense, for example because before the case can be opened the defendant pleads guilty (*R v Brook, R v Baker and Fowler, R v Sanghera, Lord Chancellor v Ian Henery Solicitors Ltd* [the present appeal]). (5) A trial will have begun even if no jury has been sworn, if submissions have begun in a continuous process resulting in the empanelling of the jury, the opening of the case, and the leading of evidence (*R v Dean Smith, R v Bullingham, R v Wembo*). (6) If, in accordance with modern practice in long cases, a jury has been selected but not sworn, then provided the court is dealing with substantial matters of case management it may well be that the trial has begun in a meaningful sense. (7) It may not always be possible to determine, at the time, whether a trial has begun and is proceeding for the purpose of the graduated fee

schemes. It will often be necessary to see how events have unfolded to determine whether there has been a trial in any meaningful sense. (8) Where there is likely to be any difficulty in deciding whether a trial has begun, and if so when it began, the judge should be prepared, upon request, to indicate his or her view on the matter for the benefit of the parties and the determining officer, as Mitting J did in *R v Dean Smith*, in the light of the relevant principles explained in this judgment.”

See **MATTER RELATING TO TRIAL ON INDICTMENT.**

See **COMMITTED FOR TRIAL; PREFERRED; SALE ON TRIAL; VERDICT; TRIED.**

TRIAL PERIOD. (Employment Protection (Consolidation) Act 1978 (c.44) s.84(3)(4).) The “trial period” in relation to the new contract of employment is strictly limited to the four weeks prescribed by this section, and cannot be extended by virtue of the fact that due to holiday closures no work was available for much of that time (*Benton v Sanderson Kayser* [1989] I.C.R. 136).

TRIBUNAL. Referring to the rule, as to the immunity for words written or spoken by a witness in a court, laid down by the Exchequer Chamber in *Dawkins v Rokeby* (L.R. 8 Q.B. 255, affirmed L.R. 7 H.L. 744), Fry L.J. said, “I accept that, with this qualification that I do not like the word ‘tribunal’. The word is ambiguous, because it has not, like ‘court’, any ascertainable meaning in English law” (*Royal Aquarium v Parkinson* [1892] 1 Q.B. 431, cited **COURT**).

A bishop’s commission of inquiry, under s.77 of the Pluralities Act 1838 (c.106), (as amended by Act of 1885 (c.54) s.3), is a judicial tribunal, and a witness therein is privileged from an action for slander in respect of the evidence given by him (*Barratt v Kearns* [1905] 1 K.B. 504).

The reference to “tribunal” in s.1 of the Evidence (Proceedings in Other Jurisdictions) Act 1975 does not include a reference to a private arbitral tribunal, since the words “exercising jurisdiction . . . in a country or territory outside the United Kingdom” are used in the sense of exercising control over the relevant country or territory and denote the exercise of a jurisdiction of a public nature (*Commerce and Industry Insurance Co of Canada v Certain Underwriters at Lloyds of London* [2002] 1 W.L.R. 1323, Q.B.D.).

Stat. Def., Corporation Tax Act 2010 s.1119.

See **COURT OR TRIBUNAL; INDEPENDENT AND IMPARTIAL TRIBUNAL.**

See **COURT; INDEPENDENT AND IMPARTIAL TRIBUNAL; JUDICIAL PROCEEDING.**

TRIBUNAL ESTABLISHED BY LAW. A judge who sat to hear a case without having been properly appointed for the purpose can still amount to a tribunal established by law for the purposes of satisfying the requirements of the European Convention on Human Rights (*Coppard v Commissioners of Customs and Excise* [2003] 2 W.L.R. 1618, CA; [2003] 3 All E.R. 351, CA).

TRIBUTARY. A “tributary” to a river (Salmon Fishery Act 1873 (c.71); cp. Salmon and Freshwater Fisheries Act 1923 (c.16) s.92(1)) is another stream which flows into it in an unimpounded course; and does not include a stream which would have been a tributary but for the fact that its waters are lawfully impounded and used by a water company, and only the surplus unused waters of which find their way into the old course of the stream (*Harbottle v Terry*, 10 Q.B.D. 131).

In that case, Stephen J., in giving judgment, said: “Is a pond fed by a stream, and running into a larger stream or river, to be called a ‘tributary’ of the larger stream? Ordinarily, one would say, no. Ordinarily, by ‘tributary’, one means a stream running into another stream. It is not a very exact word, but it has a not very indefinite popular

meaning. It is rather by instances that its meaning can be arrived at. I gave as an instance a stream dammed up into a series of pools, and running on through them from one to the other continuously, as being in my opinion a 'tributary'. And again, such a piece of water as Loch Neagh in Ireland, and another lake near Waterville in County Kerry. But take the Serpentine—it would be a strong thing to call it a 'tributary' of the Thames, and still more so to call the Round Pond one; yet some of their water finds its way into the Thames".

But a river flowing into a river which latter flows into another river, is a "tributary" of this last river (*Hall v Reid*, 10 Q.B.D. 134, fn.), and so an unnamed stream which flows into a brook which flows into a river which flows into another river, is a "tributary" of this last river (*Evans v Owen* [1895] 1 Q.B. 237).

Observe that in *Harbottle v Terry* (above) the water was impounded in order to be consumed; but running water merely diverted for a temporary purpose and all of which eventually returns to the river, is a "tributary" of the river, e.g. a mill-race, or a mill-dam which is part of a mill-race (*Moses v Iggo* [1906] 1 K.B. 516). Cp. *Stead v Nicholas* [1901] 2 K.B. 163, cited WATERS.

Where the Secretary of State's certificate defined the Severn Fishery District as "so much of the river Severn and of the rivers Vyrnwy and Teme, and of all 'other' tributaries of the river Severn as are situate in the counties specified", it was held that "other tributaries" meant direct tributaries, as the Vyrnwy and Teme are (*Merricks v Cadwallader*, 51 L.J.M.C. 20). But this decision has been superseded by a certificate of September 20, 1882, which drops the phrase "other tributaries" and speaks of the Severn and its "tributaries"; thereby an unnamed stream which flows into a brook which flows into a river which flows into the Severn, is a "tributary" of the Severn (*Evans v Owen*, above). The Vyrnwy reservoir which supplies Liverpool with water is not a tributary of the Severn (*George v Carpenter* [1893] Q.B. 505).

TRICYCLE. See LOCOMOTIVE.

Stat. Def., Vehicles (Excise) Act 1971 (c.10) Sch.1 para.3.

TRIED. "Proceedings tried in any court of record" (Law Reform (Miscellaneous Provisions) Act 1934 (c.41) s.3(1)). There seemed to be some doubt as to whether proceedings in which judgment was given in default of pleading were "tried" (*Wallersteiner v Moir (No.2)* [1975] Q.B. 373). A case in which summary judgment is awarded under R.S.C. Ord.14 has been "tried" in court and accordingly the court has power to award interest under this section (*Gardener Steel v Sheffield Brothers (Profiles)* [1978] 1 W.L.R. 916). In that case Ormrod J. held that "'tried' must mean 'determined'", and this interpretation was followed in *Alex Lawrie Factors v Modern Injection Moulds* ([1981] 3 All E.R. 658) where it was held that s.3 covered any proceedings in a court of record that had been started by a writ or other originating process and ended in judgment—irrespective of how the judgment had been arrived at. So that where a final judgment had been obtained in default of appearance to a writ the court had jurisdiction to award interest under this section.

TRIFLING. Offence "of so trifling a nature" that punishment is inexpedient (Summary Jurisdiction Act 1879 (c.49) s.16): see *Phillips v Evans* [1896] 1 Q.B. 305.

For an incoming tenant to keep open a public-house for (say) nine days without being licensed is not an offence of a "trifling" nature, even though there were no transfer day during that period and such tenant had a bona fide intention to apply for a transfer as soon as possible (*Barnard v Barton* [1906] 1 K.B. 357). Non-vaccination of a child is not a "trifling" offence, even though the parent has repeatedly tried, but

without success, to get a certificate of his conscientious belief that vaccination would be prejudicial to the child's health (*Nisbet v Lloyd*, 68 J.P. 396).

A previous conviction does not alter the character of a "trifling" offence; "if the magistrate should consider that after seven, eight, or even ten, previous convictions, the offence was still a 'trifling' one, it would be quite within his power to do so" (per Darling J., *Vinters v Freedman*, 71 L.J.K.B. 48).

Cp. TRIVIAL; VENIAL.

TRINITY HOUSE. (Merchant Shipping Act 1894 (c.60) s.742.) "'The Trinity House' shall mean the master, wardens, and assistants of the guild fraternity or brotherhood of the Most Glorious and Undivided Trinity and of St. Clement, in the parish of Deptford Strond, in the county of Kent, commonly called 'The Corporation of the Trinity House of Deptford Strond.'" See also s.3 of the Thames Conservancy Act 1894 (c. clxxxvii).

See CINQUE PORTS.

TRINITY HOUSE OUTPORT DISTRICTS. Under the Merchant Shipping Acts: "The Trinity House outport districts" comprises "any pilotage district for the appointment of pilots within which no particular provision is made by any Act of Parliament, or charter" (Merchant Shipping Act 1854 (c.104) s.370(3); cp. Pilotage Act 1913 (c.31) s.52). Ipswich is within that definition (*Hadgraft v Hewitt*, L.R. 10 Q.B. 350). See PARTICULAR PROVISION.

See hereon *The Winestead* [1895] P. 170, and *The Glanystwyth* [1899] P. 118, both cited COASTING TRADE.

TRINKETS. "Trinkets" are small articles for personal adornment, or wear, or even use when its object is essentially ornamental. Ivory bracelets, ornamental shirt pins, gilt rings, brooches, tortoiseshell and pearl portmonnaies, and scent-bottles were "trinkets" within s.1 of the Carriers Act 1830 (c.68), but a plain German-silver fusee box was not (*Bernstein v Baxendale*, 28 L.J.C.P. 265). So, ivory fans were included in a bequest of "trinkets" (*Att-Gen v Harley*, 7 L.J.O.S. Ch. 31).

See PERSONAL ORNAMENTS.

TRIP. See BUSINESS TRIP.

TRIPTYCH. See *St. John, Pendlebury* [1895] P. 178.

TROLLEY VEHICLE. Stat. Def., Road Traffic Regulation Act 1967 (c.76) s.104; Road Traffic Act 1972 (c.20) s.196; New Towns Act 1981 (c.64) s.80; Road Traffic Regulation Act 1984 (c.27) s.141.

TRONAGE. "The King's duty for the weighing of wooll at the King's beam, in all ports wherein woolls were exported" (Hale, *De Portibus Maris*, Ch.6). See further *Webb's Case*, 8 Rep. 46 b.

Cp. PESAGE.

TRONC. The "tronc" system is one under which the tips given by customers at a restaurant are pooled and shared out between them; such sums cannot be taken into account in computing the amounts which the restaurant proprietors should pay the waiters under the Catering Wages Act 1943 (c.24) s.9(2) (*Wrottesley v Regent Street Florida Restaurant* [1951] 2 K.B. 277).

TROPICAL STORM. Stat. Def., "means a hurricane, typhoon, cyclone, or other storm of a similar nature" (Merchant Shipping Act 1995 (c.21) s.91(7)).

TROUBLE

TROUBLE. The “trouble” of an executorship does not cease by the mere institution of an administration action; nor, accordingly, an annuity given to an executor for his trouble in superintending testator’s affairs (*Baker v Martin*, 8 Sim. 25).

A sum or annuity bequeathed to an executor “for his trouble”, is a legacy liable to duty (*Thorley v Massam* [1891] 2 Ch. 613, cited GIFT).

“Disturb, vex, or trouble”: see DISTURB.

TROUT. Stat. Def., Salmon and Freshwater Fisheries Act 1975 (c.51) s.41.

TROVE. See TREASURE TROVE.

TROVER. The action of trover (now frequently called an action for conversion of goods), is one of that genus of actions that were formerly called actions on the CASE. It lies where the defendant has converted or appropriated the plaintiff’s goods to his (the defendant’s) use, or has otherwise wrongfully deprived the plaintiff of their use and possession.

As to what is such a conversion, see *Hollins v Fowler*, L.R. 7 H.L. 757; *Consolidated Co v Curtis* [1892] 1 Q.B. 495. See hereon *Cooper v Chitty*, 1 Bl. W. 65; *Gordon v Harper*, 7 T.R. 9; *Termes de la Ley*; Jacob; 3 Bl. Com. 152, 153; Rosc. N.P. (20th edn), 954. Cp. DETINUE.

“A man is guilty of a conversion who takes my property by assignment from another who has no authority to dispose of it; for what is that but assisting that other in carrying his wrongful act into effect?” (per Ellenborough C.J., *M’Combie v Davies*, 6 East 540); so, of bankers who take a cheque, or such like instrument, from a person who has no title to it (*Fine Art Society v Union Bank*, 17 Q.B.D. 705; but see PAYMENT). See also *Clayton v Le Roy* [1911] 2 K.B. 1031, cited MARKET OVERT; Larceny Act 1916 (6 & 7 Geo. 5, c.50) s.20.

As used in s.3 of the Limitation Act 1623 (c.16), the claim for “trover” began to run from the conversion, not from its discovery (*Granger v George*, 5 B. & C. 149). Cp. Limitation Act 1939 (c.21) s.3. See further CAUSE OF ACTION.

Interest, beyond damages, could be given in “all actions of trover, or trespass *de bonis asportatis*” (Civil Procedure Act 1833 (c.42) s.29; see *Phillips v Homfray* [1892] 1 Ch. 465.) Cp. DEMAND.

A successful plaintiff in trover remains, after judgment, the owner of the goods for all purposes unless and until judgment is fully satisfied (*Ellis v John Stenning & Son* [1932] 2 Ch. 81).

TROY. “In every pound weight troy” (Gold Plate (Standard) Act 1798 (c.69) s.6); see *Westwood v Cann* [1952] 2 Q.B. 887.

TRUCK ACT. Truck Act 1831 (c.37); amended by Truck Amendment Acts 1887 (c.46), and 1896 (c.44).

See AGREEMENT; ARTIFICER; BUTTY COLLIER; CONTRACT TO SUPPLY; MATERIALS; MEDICINE; PAYMENT. See further DEDUCTION; *M’Lucas v Campbell*, 30 Sc. L.R. 226, cited PAYMENT; WAGES.

TRUCK-MASTER. To write of a man that he is a “truckmaster” is a libel (*Homer v Taunton*, 29 L.J. Ex. 318); in giving the judgment, Pollock C.B. said the word was not then to be found in any English dictionary.

TRUE. When a contract—e.g. a life policy—proceeds on the basis that statements made by the party to be benefited thereunder are “true”, it will be avoided if any material statement is untrue in fact, even though it be made in good faith and be not

untrue to the knowledge of the party making it (*Macdonald v Law Union Insurance*, L.R. 9 Q.B. 328). See CORRECT; UNTRUE. But see *Hemmings v Sceptre Life Assurance* [1905] 1 Ch. 365.

“True and correct statement of income” (s.107 of the Income Tax Act 1918 (c.40)): see *Att-Gen v Till* [1910] A.C. 50, cited DELIVER.

“True and correct view of the state of the company’s affairs” (Companies Act 1929 (c.23) s.134), i.e. “the purpose of the balance sheet is primarily to show that the financial position of the company is at least as good as there stated; not to show that it is not, or may not be better The auditor’s duty is to call attention to that which is wrong, not to condescend upon all the details of that which is right” (per Buckley J., *Newton v Birmingham Small Arms Co* [1906] 2 Ch. 378, cited AUDIT; *Re City Equitable Fire Insurance Co* [1925] Ch. 407). See Companies Act 1948 (c.38) Sch.9 para.4.

TRUE AND ANCIENT RENT. See *Mountjoy’s Case*, 5 Rep. 3 b; cited Sug. Pow. (8th edn), 730.

TRUE BILL. “*Billa vera*’ is a term of art” indorsed by the grand jury on an indictment; and signifies “that the presentor hath furnished his presentment with probable evidence and worthy of farther consideration; And thereupon the party presented is said to stand indicted of the crime, and so bound to make answer unto it, either by confessing or traversing the indictment” (Cowel, *Billa Vera*). See further 4 Bl. Com. 305, 306.

The antithesis is “*ignoramus*”, “a word properly used by the Grand Inquest . . . and written upon the bill when they mislike the evidence as defective, or too weak, to make good the presentment; the effect of which word so written is that all farther enquiry upon that party for that fault is thereby stopped, and he delivered without further answer” (Cowel). The phrase now generally used is “not a true bill”.

TRUE COPY. A “true copy” does not mean an absolutely exact copy; but it means that the copy shall be so true that nobody can by any possibility misunderstand it (per Bacon C.J., *Re Hewer*, 21 Ch. D. 871). In that case a bill of sale was held well registered, though there was a clerical error in the registered copy of it (see also *Sharp v McHenry*, 38 Ch. D. 428; *Tuck v Southern Counties Deposit Bank*, 42 Ch. D. 471); so, though the date be omitted in the copy if the omission be supplied by the affidavit (*Thomas v Roberts* [1898] 1 Q.B. 657); so of the omission of the name of the grantor of the bill of sale and of the name and address of the attesting witness, if such omissions be supplied by the affidavit (*Coates v Moore* [1903] 2 K.B. 140). The test whether the copy is a “true” one is whether any variation from the original is calculated to mislead an ordinary person; see *Burchill v Thompson* [1920] 2 K.B. 80, where it was held, on appeal, that the omission of the words “per annum” after the statement of the rate of interest to be paid, prevents the copy from being a true copy. See also *Commercial Credit Co v Fulton Bros*, 93 L.J.P.C. 12. But a served copy of an order of court is not a true one, for the purpose of attachment for disobedience, if the title of the cause or matter be omitted (*Re Holt*, 11 Ch. D. 168).

As to “true copy” of a trader-debtor summons under Bankruptcy Act 1849 (c.106) see *Re Tindall*, 24 L.J. Bank. 18.

See COPY. Cp. TRANSLATION.

TRUE FAITH. As to the old abjuration oath “upon the true faith of a Christian”, see *Miller v Salomons*, 7 Ex. 475; 8 Ex. 778.

TRUE NAME. (Marriage Act 1823 (c.76) s.7; see Marriage Act 1949 (c.76) s.8.) Publication of banns in the name by which one party was known even though it was not her proper surname was held to be publication in her "true name" (*Dancer v Dancer* [1949] P. 147).

TRUE OWNER. "True owner" (Bills of Exchange Act 1882 (c.61) s.82). Where a farm subsidy warrant was made payable to the farm manager but endorsed "for" the farm owner, it was the farm owner who was the "true owner" of the warrant (*Bute (Marquess) v Barclays Bank* [1955] 1 Q.B. 202).

TRUE VALUE. See SUBJECTIVE VALUE.

TRULY SET FORTH. The Bills of Sale Act 1878 (c.31) s.8 requires the consideration of a bill of sale to be "set forth" therein, and Bills of Sale Act 1882 (c.43) s.8 requires the consideration to be "'truly' set forth". The adverb here does not add to the sense (per Smith J., *Staniforth v Capon*, 2 T.L.R. 493).

Under either Act, the requirement is that the consideration (but not the sum secured: *Ex p. Chillinor, Re Rogers*, 16 Ch. D. 260) shall truly and fairly, according to the ordinary dealings of honest men, appear on the face of the document (*Roberts v Roberts*, 13 Q.B.D. 794; see further per Rigby L.J., *Darlow v Bland* [1897] 1 Q.B. 125).

Thus, moneys really paid at the request of the grantor to satisfy a debt, due from the grantor, may be stated to have been paid to him (*Ex p. National Mercantile Bank, Re Haynes*, 15 Ch. D. 42; *Ex p. Challinor*, above; *Hamlyn v Betteley*, 5 C.P.D. 327; *Ex p. Bolland, Re Roger*, 21 Ch. D. 543; see also *Carrard v Meek*, 50 L.J.Q.B. 187; *Staniforth v Capon*, above); but, to bring a case within the doctrine of those decisions, the debt so paid must be absolute, prior to the execution of the bill of sale; therefore, a deduction in respect of a mere inchoate liability as, e.g. for mortgagee's expenses in relation to the security (*Ex p. Firth, Re Cowburn*, 19 Ch. D. 419; *Hamilton v Chaine*, 7 Q.B.D. 319; *Ex p. Charing Cross Bank, Re Parker*, 16 Ch. D. 35; *Richardson v Harris*, 22 Q.B.D. 268. But see *Re Cann, Ex p. Hunt*, 13 Q.B.D. 36), or for commission on the loan (*Hamilton v Chaine*, above), or for prospective interest (*Ex p. Charing Cross Bank, Re Parker*, above), or for an agreement to make a future payment (*Ex p. Rolph, Re Spindler*, 19 Ch. D. 98), or a liability on an immature acceptance held by the grantee of the bill of sale (*Richardson v Harris*, above; *semble*, otherwise if applied in payment of the grantee's immature liability to a third party, *Re Wiltshire* [1900] 1 Q.B. 96, cited *Now*), cannot be regarded as money paid to the grantor, and if such statement be the only reference to such a deduction the consideration will not be either "truly set forth" or "set forth". But, on the other hand, if the debt be absolute before the execution of the bill of sale, then, though it be due to the grantee himself, it will be properly stated as money paid to the grantor, for an allowance to him in account is equivalent to payment (*Credit Co v Pott*, 6 Q.B.D. 295; *Ex p. Johnson, Re Chapman*, 26 Ch. D. 338; *Ex p. Nelson*, 55 L.T. 819); a fortiori if the whole of the new advance be actually made, although made on the understanding (duly carried out) that the old debt to the grantee shall be paid within a very short time (*Thomas v Searles* [1891] 2 Q.B. 408, cited *TRUE OWNER*).

A bill of sale, given in substitution for a prior defective one, and which contained no reference to that prior document, but stated the pecuniary consideration as "now paid", was held to truly set forth the consideration (*Ex p. Allam, Re Munday*, 14 Q.B.D. 43; see also *Re Davies*, 77 L.T. 567; but see *Ex p. Berwick*, 29 W.R. 292). As to "now paid" and "now due", see further *Now*.

Where a bill of sale was prepared by the grantor's solicitor, and the consideration was a truly stated antecedent debt which the grantor was unable to pay and "in order to induce the grantee not to institute proceedings" the grantor had agreed to make the bill of sale; held, that the consideration was truly set forth, although the grantee had not threatened proceedings (*Ex p. Winter*, 25 S.J. 333).

The consideration must be truly set forth in the bill of sale itself; and an incorrect or imperfect statement of it there cannot be rectified by reference to a receipt endorsed on it (*Ex p. Charing Cross Bank, Re Parker*, above).

Though s.8 of the Bills of Sale Act 1878 (c.31), uses the phrase "set forth" the consideration, s.10(3) requires a defeasance to be "truly set forth".

See PAID; PAYMENT.

TRUNK ROAD. Stat. Def., Highways Act 1980 (c.66) s.329; Planning Act 2008 s.235.

TRUST. "No definition of a 'trust' seems to have been accepted as comprehensive and exact. Strictly, it refers, I think, to the duty or the aggregate accumulation of obligations that rest upon a person described as a trustee. The responsibilities are in relation to property held by him, or under his control. That property he will be compelled by a court in its equitable jurisdiction to administer in the manner lawfully prescribed by the trust instrument, or where there be no specific provision written or oral, or to the extent that such provision is invalid or lacking, in accordance with equitable principles" (per Mayo J., *Re Scott* [1948] S.A.S.R. 193, 196).

"Trust" (Statute of Frauds ss.7, 8) includes a "use" (*Bushell v Burland*, Holt 733); but a mere agency to buy property is not a "trust" or "confidence", within those sections (*Cave v Mackenzie*, 46 L.J. Ch. 564). See MANIFESTED.

Where realty is devised "upon trust", or "in trust", and there are no active duties to perform, "the term 'trust' would be read, not in its modern sense, but in the old sense in which it was understood before and in the Statute of Uses (27 Hen. 8, c.10), which admitted of no difference between 'uses' and 'trusts'" (per Chitty J., *Re Brooke* [1894] 1 Ch. 43, cited LEGAL ESTATE). See USE.

The word "trust" is not necessary to create a trust, nor will its use necessarily create one (2 Jarm. (8th edn), 866; *Te Teira v Te Roera Tareha* [1902] A.C. 64); but its use is frequently most useful in showing that a trust is intended (per Chitty L.J., *Hill v Hill*, 66 L.J.Q.B. 335).

"As the doctrines of trust are equally applicable to real and personal estate, and the principles that govern the one will be found, *mutatis mutandis*, to govern the other, we cannot better describe the nature of a trust, generally, than by adopting Lord Coke's definition of a 'use', the term by which, before the Statute of Uses, a trust of lands was designated. A trust, in the words applied to the use, may be said to be: 'A confidence reposed in some other, which is not issuing out of the land, but as a thing collaterall, annexed in privity to the estate of the land, and to the person touching the land' (Co. Litt. 272B)" (Lewin (15th edn), 11).

Trustee Act 1925 (c.19) s.68(17): "'trust' does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expressions 'trust' and 'trustee' extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative". That definition (taken in great part from Trustee Act 1850 (c.60) s.2 and Trustee Act 1893 (c.53) s.50) includes a mortgagor (owned of the fee simple) who has given a declaration to his equitable mortgagee that he will hold all his

TRUST

estate in trust for the mortgagee; and if it be added that the mortgagee may remove the mortgagor from the trust and appoint new trustees, the mortgagee in doing so might, by Trustee Act 1893 (above) s.12(1) (see now Trustee Act 1925 (above) s.40) divest the legal estate the mortgagor had at the time of the mortgage out of the mortgagor and vest it in his (the mortgagee's) nominee as against a subsequent legal mortgagee (*London & County Bank v Goddard* [1897] 1 Ch. 642); "any trust" in that section was not to be limited to substantial trusts (*Goddard*).

Judicial Trustees Act 1896 (c.35) s.1(2): "the administration of the property of a deceased person (whether a testator or intestate) shall be a trust, and the executor or administrator a trustee". "Therefore, clearly s.3 (which gives the court power to relieve for breach of trust) applies to the case of an executor who has been guilty of a devastavit" (per Romer J., *Re Kay* [1897] 2 Ch. 518); see further REASONABLY.

Settled Land Act trustees are trustees of a trust; an appointment of a judicial trustee for the purposes of the Settled Land Act 1925 (c.18), is therefore competent (*Re Marshall's Will Trusts* [1945] Ch. 217).

"Trusts" (Income Tax Act 1918 (c.40) s.37) embraced trusts under the Scottish and English systems of law (*Camille & Henry Dreyfus Foundation Inc v IRC* [1956] A.C. 39).

As to policies, whether held on trust, see BENEFIT. As to bequests "on condition", "charged with", etc. whether subject to trust, charge or personal obligation, see *Re Lester* [1942] Ch. 324; *Re Frame* [1939] Ch. 700; *Re Darby* [1939] Ch. 905.

The words "in trust" in a policy of insurance indemnifying the insured against loss of or damage to goods belonging to or held "in trust" by the insured mean "entrusted to" the insured, whether he has come into physical possession of them or not (*Rigby (John) (Haulage) v Reliance Marine Insurance Co* [1956] 2 Q.B. 468).

There is no inherent relationship of trust or agency between co-owners (*Kennedy v De Trafford* [1897] A.C. 180).

"Breach of trust" A musician and his manager, who agreed that the latter would manage his business affairs and receive 20 per cent of the musician's income, were in a fiduciary relationship and so not subject to the limitation period imposed by the Limitation Act 1980 (c.58) s.21(1)(b) (*Nelson v Rye* [1997] 2 All E.R. 186).

For discussion of the difficulty of defining an express trust and an attempt at a generic definition see [2002] C.L.J. 657–83.

Stat. Def., Recognition of Trusts Act 1987 (c.14) Sch. art.2; Building Societies Act 1986 (c.53) s.6B(8) inserted by Building Societies Act 1997 (c.32) s.6.

"Declaration of trust": see DECLARATION.

"Like trusts": see LIKE.

Stat. Def., Settled Land Act 1925 (c.18) s.117; Trustee Act 1925 (c.19) s.68; Charities Act 1960 (c.58) s.46; Finance Act 1968 (c.44) Sch.15 para.13; Solicitors Act 1974 (c.47) s.87.

Stat. Def., "includes a trust created by a will" (s.162(6) of the Political Parties, Elections and Referendums Act 2000 (c.41)).

"The first thing is that, while Scots law has no difficulty in using the word 'trust' in this context, the concept is more accurately and precisely analysed by referring to the fiduciary duty that the agent owes to his client with regard to money that he holds on his client's behalf. So the fact that a statutory trust is rejected by section 139(3) of the 2000 Act in favour of agency in the application of section 139(1) to Scotland, while at

first sight surprising, does appear to have some basis in the language that was used to explain the relationship in *Jopp v Johnston's Trustee*." (*Lehman Brothers International (Europe)*, *Re* [2012] UKSC 6.)

See BREACH OF TRUST; CHARITABLE PURPOSE; COMMISSION; CONSTRUCTIVE; DISTINCT; EXECUTED; EXPRESS; IN TRUST; INTRUSTED; NOTICE; PARTICULAR TRUST; PRECATORY TRUST; IN TRUST; POSITION OF TRUST; RESULTING TRUST; SECRET TRUST; SIMPLE TRUST; TRUSTEE; TRUST FOR SALE; UPON TRUST.

TRUST CORPORATION. Stat. Def., Supreme Court Act 1981 (c.54) s.128; Finance Act 1982 (c.39) s.94; Capital Transfer Tax Act 1984 (c.51) Sch.4; Enduring Powers of Attorney Act 1985 (c.29) s.13.

TRUST ESTATE. A substitutional gift of "my trust estate", held to include the corpus of past accumulations (*Re Travis* [1900] 2 Ch. 541).

TRUST FUNDS. "Trust funds", in its ordinary acceptation and as used in s.3 of the Trust Investment Act 1889 (c.32)—see Trustee Investments Act 1961 (c.62) s.1—is not confined in its meaning to cash awaiting investment but "signifies funds belonging to the trust, including money invested on security or otherwise as well as uninvested cash" (per Lord Watson, *Hume v Lopes* [1892] A.C. 112); therefore, the power to vary extends to all investments whether made under the Act or not (*Hume*).

"Trust funds . . . in a state of investment" (Trustee Act 1925 (c.19) s.1(1)) included investments specifically settled by a will containing no express power of sale. The trustees accordingly had power to sell such investments and reinvest in any authorised security (*Re Pratt's Will Trusts* [1943] Ch. 326).

See FUNDS.

TRUST INSTRUMENT. (Settled Land Act 1925 (c.18) s.36(1).) Settled land may be held on trust for persons entitled in undivided shares under a trust instrument although the trust instrument itself does not cause the division, but the division into shares is effected by a subsequent deed or event (*Re Hind, Bernstone v Montgomery* [1933] Ch. 208).

TRUST PROPERTY. (Trustee Act 1925 (c.19) s.57.) "Trust property" cannot include the equitable interests which a settlor has created in that property (*Re Downshire Settled Estates* [1953] Ch. 218).

See PROPERTY.

TRUSTEE. A trustee is one who holds the "ownership or possession of, or dominion over, the subject of the trust, but is bound to allow the beneficial enjoyment or usufruct of that subject to be reaped by another who is called the *cestui que trust*, or beneficiary" (Godefrois (2nd edn), 2). See further TRUST.

As to who may be a trustee, see Lewin (15th edn), 24 et seq.; *Re Stamford* [1896] 1 Ch. 288.

"Undoubtedly corporations may be trustees" (per Swinfen Eady J., *Re Thompson* [1905] 1 Ch. 231; see further *National Trustees Co of Australia v General Finance Co of Australia* [1905] A.C. 73, cited REASONABLY). See Trustee Act 1925 (c.19) s.41.

"Trustee" (Trustee Act 1888 (c.59) s.1; see Trustee Act 1925 (c.19) s.68(17)) included a director of a company who, as such, was entitled to the protective limitation given by s.8 (*Re Lands Allotment Co* [1894] 1 Ch. 616), for "though directors are not trustees from the mere fact of being directors, yet they have always been considered and treated as trustees of money which comes to their hands or which is actually under their control" (per Lindley L.J., *ibid.*; see hereon *Young v Naval & Military Co-operative Society of South Africa* [1905] 1 K.B. 687; *Re Frances*, 74 L.J. Ch. 198;

and *Re Macfadyen* [1908] 2 K.B. 817, all cited DIRECTOR); but s.8 was not available to a trustee in bankruptcy (*Re Cornish* [1896] 1 Q.B. 99). See further *Gardner v Cowles*, 3 Ch. D. 304; *Re Findlay*, 32 Ch. D. 221, 641; see also *Percival v Wright* [1902] 2 Ch. 421. See also BREACH OF TRUST.

A voluntary liquidator of a company is not a trustee within the meaning of Trustee Act 1925 s.68(17) and is therefore not entitled to the indemnity given to trustees by s.30: see *Re Windsor Steam Coal Co Ltd* [1928] 1 Ch. 609; affirmed 98 L.J. Ch. 147.

“Trustee” (The Trust Investment Act 1889 (c.32) s.9) included the trustees of a charity, but not the trustees of a building society, the latter being rather agents for carrying on the business of the society (*Manchester Infirmary v Att-Gen*, 43 Ch. D. 420, 431; *Re National Permanent Building Society*, 43 Ch. D. 431).

An executor, or even an administrator with the will annexed, could have been a trustee for an infant, within s.43 of the Conveyancing Act 1881 (c.41) (*Re Adams*, 51 S.J. 113). An executor of a surviving trustee was the trustee of such a trust: see *Re Waidanis* [1908] 1 Ch. 123, cited ASSIGNS. See Trustee Act 1925 (c.19) s.31, and an administrator who has cleared an intestate’s estate ceases to be an administrator and becomes a trustee, and the court can appoint a new trustee to act jointly with him: see *Re Ponder* [1921] 2 Ch. 59.

As to when a claim is not, or ceases to be, for a “legacy” against a person as executor (for which the period of limitation is 12 years: Real Property Limitation Act 1874 (c.57) s.8; see Limitation Act 1939 (c.21) s.18(1))—and is, or has become, one against him as “trustee” (for which the period is six years: Trustee Act 1888 (c.59) s.8; see Limitation Act 1939 (above) s.19), see *Re Swain* [1891] 3 Ch. 233, cited BREACH OF TRUST; *Re Timmis* [1902] 1 Ch. 176. See further EXECUTOR; *Re Oliver* [1927] 2 Ch. 323.

Further, as to what fiduciary position will constitute a person a trustee as regards the Statutes of Limitation, see *Burdick v Garrick*, 5 Ch. 233, and cases there cited; *North American Land Co v Watkins* [1904] 1 Ch. 242, [1904] 2 Ch. 233, and cases there cited.

Where a testator directed his debts “to be paid by my executors hereinafter named”, but appointed no executors and did appoint “trustees”, held that probate should be granted to these “trustees” as executors (*Re Kirby* [1902] P. 188).

“Every power given to trustees which enables them to deal with, or affect, the trust property, is prima facie given them *ex officio* as an incident of their office, and passes with the office to the holders or holder thereof for the time being. Whether a power is so given *ex officio* or not, depends in each case on the construction of the document giving it; but the mere fact that the power is one requiring the exercise of a very wide personal discretion, is not enough to exclude the prima facie presumption; and little regard is now paid to such minute differences as those between ‘my trustees’, ‘my trustees, A and B’, and ‘A and B my trustees’. The testator’s reliance on the individuals, to the exclusion of the holders of the office for the time being, must be expressed in clear and apt language” (per Farwell J., *Re Smith, Eastick v Smith* [1904] 1 Ch. 144, citing Bowen L.J., in *Crawford v Forshaw* [1891] 2 Ch. 267, and *Byam v Byam*, 24 L.J. Ch. 209, and dissenting from *Cole v Wade*, 16 Ves. 27, 44; see further EXECUTOR).

Retiring trustees should not appoint the Public Trustee in their place if there is some other and proper way out of the difficulty: see *Re Hope-Johnstone*, 53 S.J. 321.

As to gifts to, and purchases by, a trustee, see *UNDUE INFLUENCE*. One who has been, but has fairly and entirely ceased to be, a trustee, may be a purchaser of the trust property (*Re Boles and British Land Co* [1902] 1 Ch. 244).

As to remuneration to a trustee for services rendered in some sense in relation to the trust, but not paid for by its funds, see *Re Dover Coalfield Extension Ltd* [1908] 1 Ch. 65; *Re Lewis*, 55 S.J. 29; *Re Sykes* [1909] 2 Ch. 241; *Bath v Standard Land Co* [1911] 1 Ch. 618. As to remuneration to trustees of a debenture trust deed, see *Re Picadilly Hotel Ltd*, 56 S.J. 62; *Re British Consolidated Oil Corporation* [1919] 2 Ch. 81.

A mortgagee having surplus sales moneys in hand is a trustee of them within the Trustee Acts (*Robertson v Norris*, 30 L.T.O.S. 253; but see *Nash v Eads*, 25 S.J. 95; see further *Belton v Bass, Ratcliffe & Gretton* [1922] 2 Ch. 449; *Roberts v Ball*, 24 L.i. Ch. 471; *Re Hardley*, 10 Ch. D. 664; *Re Waihampton*, 26 Ch. D. 391).

A vendor who has covenanted to surrender copyholds is a "trustee" within the Trustee Acts (*Re Cuming*, 5 Ch. 72; *Re Powis*, 29 S.J. 373); see further especially on s.26(vi) of the Trustee Act 1893 (56 & 57 Vict., c.53)—see Trustee Act 1925 (c.19) s.44(vi); *Re Coiling*, 32 Ch. D. 333; *Re Pagani* [1892] 1 Ch. 236; *Re Lowry*, L.R. 15 Eq. 78; and *Re Beaufort* [1898] W.N. 148. See now definition of "trustee" and "new trustee" in Trustee Act 1925 (c.19) s.68. In s.25 of that Act, trustee "includes a tenant for life and a statutory owner".

The probate judge is not by virtue of s.9 of the Administration of Estates Act 1925 (c.23) a "trustee" within the meaning of the Trustee Act 1925 (c.19) (*Re Deans, Westminster Bank v Official Solicitor* [1954] 1 W.L.R. 332).

Bankruptcy Act 1883 (c.52) s.168; see Bankruptcy Act 1914 (c.59) s.167: "'trustee' means the trustee in bankruptcy of a debtor's estate"; therefore, the powers given to a "trustee" by s.27 (Act of 1914 (above) s.25) are not applicable to the trustee of an arrangement under s.18 (Act of 1914 (above) s.16) (*Re Grant*, 17 Q.B.D. 238). "Trustee" as used in s.162(2) (Act of 1914 (above) s.153(2)): see *Re Chudley*, 14 Q.B.D. 405; *Re Cornish* [1896] 1 Q.B. 99 and a trustee in bankruptcy is not an assignee for value and cannot by prior notice gain priority over an equitable assignee (*Re Wallis* [1902] 1 K.B. 719). See *Re Cohen* [1905] 2 K.B. 704, cited *APPOINTMENT*.

"Trustees for sale" (Law of Property Act 1925 (c.20) s.28) does not include trustees who have held but no longer hold land on trust for sale (*Re Wakeman, National Provincial Bank v Wakeman* [1945] Ch. 177). See also Law of Property Act 1925 (above) s.205; Land Registration Act 1925 (c.21) s.3; Settled Land Act 1925 (c.18) s.117; Trustee Act 1925 (c.19) s.68.

"Trustees with 'future' power of sale", who (by s.30 of the Settled Land Act 1925, above) are "trustees of the settlement" under the Settled Land Acts, include persons who are trustees of a settlement which contains such a future power, although some or one of them are persons who probably will not, or in fact cannot, ever exercise the power, e.g. a tenant for life, although the power of sale will not arise till after his death (*Re Jackson* [1902] 1 Ch. 258). See further *Re Davies and Kent* [1910] 2 Ch. 35, applying *Re Bowles* [1905] 1 Ch. 371.

"The mere fact that persons are trustees for the purposes of the Settled Land Acts and therefore are 'trustees of the settlement' under Sch.II, para.3, Settled Land Act 1925 does not make them 'trustees with power of sale' within s.42, Conveyancing Act 1881 (c.41)" (see Settled Land Act 1925 (c.18) s.102); the power of sale is in the

TRUSTEE

tenant for life, and when he is an infant, it may, under Sch.II para.3, be exercised “on his behalf”, by the trustees of the settlement (per Joyce J., *Re Helyar* [1902] 1 Ch. 391).

(R.S.C. Ord.62 r.6(2).) A maintenance trustee who managed flats and administered a maintenance fund made up of tenants’ contributions was not acting as “trustee” for the tenants but as agent of the landlord when he tried to enforce the tenants’ repairing covenants (*Holding and Management v Property Holding and Investment Trust* [1988] 1 W.L.R. 644).

A trustee *de son tort* is one who acquires the possession of or dominion over trust property, or to whom such property comes and who chooses to take upon him self the business of a trustee in relation to such property; he cannot, for his own benefit, say that he had no right to act as a trustee (*Rackham v Siddall*, 16 Sim. 297), and his liability is the same as a trustee regularly appointed (*Rackham; Pearce v Pearce*, 25 L.J. Ch. 893; *Hennessy v Bray*, 33 Bea. 96, 102).

As to the estate taken by trustees in view of the phrases that may be employed in the instrument creating the trust, see LEGAL ESTATE.

As to trustee investments, see INVESTMENTS.

“Commissioners, trustees”, etc.: see COMMISSIONERS.

Power “in the character of trustee or guardian”: see CHARACTER.

“Trustees of inheritance”: see INHERITANCE.

“Trustees for the time being”: see TIME BEING.

Stat. Def., Trustee Act 1925 (c.19) s.68(17); Finance Act 1968 (c.44) Sch.15 para.13; Trustee Savings Bank Act 1969 (c.50) s.95; Finance Act 1973 (c.51) ss.16(6), 17(5); Finance Act 1975 (c.7) Sch.5 para.1(7); Trustee Savings Banks Act 1981 (c.65) s.54; Capital Transfer Tax Act 1984 (c.51) s.45.

The survivor of two people who had made mutual wills and the survivor’s executor were trustees for the purposes of s.1 of the Judicial Trustees Act 1896 (*Thomas and Agnes Carvel Foundation v Carvel* [2007] EWHC 1314 (Ch)).

A reference to a trustee in the Civil Jurisdiction and Judgments Order 2001 does not include all persons with fiduciary powers (*Gomez v Gomex-Monche Vives* [2008] EWCA Civ 1065).

See ACTING TRUSTEE; APPOINT; BARE TRUSTEE; CONTINUING TRUSTEE; CREDITOR; DECLINING TRUSTEE; EXISTING; GRATUITOUS JUDICIAL TRUSTEE; LAST; NEW TRUSTEE; OFFICIAL; OTHER TRUSTEE; PRIVATE TRUSTEE; PUBLIC TRUSTEE; REMAIN SOLE TRUSTEE; SURVIVING TRUSTEE; TRUST; UNDUE INFLUENCE; UPON TRUST; VESTING.

Stat. Def., “includes an executor, administrator or personal representative” (Presumption of Death Act 2013 s.20).

TRUSTEE CORPORATION. Stat. Def., Pensions Act 2008 s.75.

TRUSTEES OF THE SETTLEMENT. A trustee *de son tort* is not within the phrase “trustees of the settlement”, which refers only to properly appointed trustees (*Jasmine Trustees Ltd v Wells & Hind* [2007] EWHC 38 (Ch)).

TRUSTING. See PRECATORY TRUST.

TRUTH. “Plead guilty or admit the truth of the information or complaint” (Summary Jurisdiction Act 1879 (c.49) s.19): see *R. v Essex Justices* [1892] 1 Q.B. 490.

Compromise of a claim in reliance on "the truth, accuracy, and completeness" of a statement of affairs by the debtor: see *Assets Co v Bain's Trustees*, 41 Sc. L.R. 517, reversed 42 Sc. L.R. 835.

"Truth and honour of the settlement": see PARAMOUNT.

TRY. See TRIAL; TRIED.

TUG. See TOW.

TUMBRELL. "Is an engine of punishment which ought to be in every liberty that hath view of frankpledge for the correction of scolds and unquiet women" (Cowel).

TUMULTUOUSLY. See RIOTOUSLY.

TUNNEL. A tunnel may be a building: see *Schweder v Worthing Gas Co* [1912] 1 Ch. 83, cited BUILDING.

"Cutting, tunnelling or levelling any land" (Income Tax Act 1945 (c.32) s.14(1)(b)). "Cutting" and "tunnelling" are extended ways of describing "excavating" (*McIntosh v Manchester Corp* [1952] 2 All E.R. 444).

Lands Clauses Consolidation Act 1845 (c.18) ss.84, 85: see *Hill v Midland Railway*, 51 L.J. Ch. 774, cited HEREDITAMENT; *Bevan v London Portland Cement Co*, 67 L.T. 615.

TURBARY. "Common of turbary is a right to dig turves (i.e. peat, not green turf) in another man's land, or in the lord's waste, for fuel to burn in the house; and therefore it is appendant or appurtenant to a house only, and not to land: 5 Assis. 9; *Tyrningham's Case*, 4 Rep. 36 b; *O'Hare v Fahy*, 10 Ir. Com. Law Rep. 318. It cannot be dug for sale: *Valentine v Penny*, Noy, 145; *Hayward v Cannington*, 1 Sid. 354. And it does not give a right to take green turf for making grass plots, or repairing the hedges or fences of a garden: *Wilson v Willes*, 7 East, 121" (Elph. 627). See hereon *Ely, Dean, etc. v Warren*, 2 Atk. 189.

As to what words in an enclosure award will vest the legal estate in the soil for the purpose of turbary, see *Simcoe v Pethick* [1898] 2 Q.B. 555, cited SET OUT, and cases therein cited.

"'Turbaria' is also taken sometimes for the ground where turves are digged" (Cowel).

See MOSSES; SUFFICIENT PASTURE.

TURN. A "turn" of patronage to a church: see *Keen v Denny* [1894] 3 Ch. 169, and authorities there cited.

"In turn", in a charterparty, means (unless explained by the evidence) in the order of readiness (*Robertson v Jackson*, 15 L.J.C.P. 28; *Lawson v Burness*, 1 H. & C. 396; *King v Hinde*, 12 L.R. Ir. 113).

"In turn to deliver": as to what evidence of usage will enable the court to construe these words in a charterparty in a particular way, see *Robertson v Jackson*, above.

"In regular turns of loading": as to what evidence is admissible to explain this phrase, cp. *Leidemann v Schultz* (23 L.J.C.P. 17) with *Hudson v Clementson* (25 L.J.C.P. 234); see hereon *Lawson v Burness* and *King v Hinde*, above; Carver (12th edn), 1254 et seq.

"Cases have been cited which I take it show prima facie the words 'in regular turn', unless there is something to lead to a different conclusion, mean 'in regular PORT turn'; but none of these cases shows that 'in regular turn' cannot mean 'in regular colliery turn', as distinguished from 'regular port turn'" (per Williams L.J., *The Quilpué v Brown* [1904] 2 K.B. 270, in which case the phrase was construed as "regular colliery turn"). See further *Jones v Green* [1904] 2 K.B. 275; cp. *Ardan S.S.*

TURN

Co v Weir [1905] A.C. 501, cited CARGO. See further *The Cordelia* [1909] P. 27, and *United States Shipping Board v Strick* [1926] A.C. 545. See also CUSTOMARY TURN. "Loading in turn": see *Taylor v Clay*, 9 Q.B. 713.

See TURNÉ.

TURN LOOSE. See LOOSE.

TURN OUT. In a clause in an apprenticeship indenture, a "turn-out" of the master's workmen includes a lock-out by him as well as a strike; and if the indenture enables the master to stop the apprentice's wages during a "turn-out", the stipulation is so unfair against the apprentice that the indenture cannot be enforced against him (*Corn v Matthews* [1893] 1 Q.B. 310; *Meakin v Morris*, 12 Q.B.D. 352); *secus*, of a like provision if the stand-still is through "accident beyond the master's control" (*Green v Thompson* [1899] 2 Q.B. 1). See hereon 44 S.J. 38; see THROWN OUT.

Agreement not to "turn out" tenant as long as he duly pays his rent: see *Browne v Warner*, 14 Ves. 156, cited MOLEST.

TURN ROUND. See *The John Holloway* [1900] P. 37, and *The River Derwent*, 52 L.T. 45, both cited CROSSING.

TURNÉ. The privilege of the turn is the power to hold a court within the precinct of the same authority as the sheriff's turne; and whosoever hath the leet hath this privilege (*Termes de la Ley*, *Turne del Viscont*).

TURNER'S ACT. Court of Chancery Act 1850 (c.35).

TURNING OVER. See *Pickford v Quirke*, 44 T.L.R. 15.

TURNOVER. A plaintiff was to be paid commission "on turnover... of the company's annual business"; this included all sums received and receivable in the year, whether normal or abnormal, and therefore included lump sum settlements and payments under Government contracts (*Aris-Bainbridge v Turner Manufacturing Co* [1951] 1 K.B. 563).

A definition of turnover in a lease as including "gross amount of the total sales" should not be construed so as to include VAT (*Debenhams Retail Plc v Sun Alliance*, T.L.R., November 15, 2004, Ch).

Stat. Def., Companies Act 1981 (c.62) Sch.1 para.94; Companies Act 1985 (c.6) Sch.4 para.95; Companies Act 1989 (c.40) s.22.

Stat. Def., "in relation to a company, means the amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of—(a) trade discounts, (b) value added tax, and (c) any other taxes based on the amounts so derived" (Companies Act 2006 s.474(1)).

Stat. Def. (in context of a society), Co-operative and Community Benefit Societies Act 2014 s.102.

TURNOVER TAX. "In order to decide whether a tax, duty or charge can be characterised as a turnover tax within the meaning of Article 33 of the Sixth Directive, it is necessary, in particular, to determine whether it has the effect of jeopardising the functioning of the common system of VAT by being levied on the movement of goods and services and on commercial transactions in a way comparable to VAT." (*Banca popolare di Cremona Soc coop ari v Agenzia Entrate Ufficio Cremona* (Case C-475/03) ECJ.)

TURNPIKE ROAD. "A 'turnpike-road' means a road having toll-gates or bars on it, which were originally called 'turns' and were first constructed about the middle of the eighteenth century. Certain individuals, with the view to the repair of particular roads, subscribed among themselves for that purpose, and erected gates upon the

roads, taking tolls from those who passed through them. These were violently opposed at first, and petitions were presented to Parliament against them; and Acts were in consequence passed for their regulation. This was the origin of turnpike roads. The distinctive mark of a turnpike road is the right of turning back anyone who refuses to pay toll" (per Abinger C.B., *Northam Bridge Co v London & Southampton Railway*, 9 L.J. Ex. 166; see also *R. v East & West India Docks & Birmingham Railway*, 22 L.J.Q.B. 380; per Lawrence J., *R. v Staffordshire Canal Navigation*, 8 T.R. 350).

Dedication of a road to the public, reserving tolls which are gathered by means of toll-bars, does not make the road a turnpike road, unless the scheme has legislative sanction (*Austerberry v Oldham*, 29 Ch. D. 750; *Midland Railway v Watton*, 17 Q.B.D. 30).

"A turnpike road is a highway" (per Blackburn J., *Sunk Island Turnpike Road Trustees v Patrington*, 1 B. & S. 756, cited by Bramwell L.J., *R. v French*, 4 Q.B.D. 509).

As to the distinction between a turnpike road and a highway, see per Lord Blackburn, *West Riding Justices v The Queen*, 8 App. Cas. 790.

Stat. Def., Highways (South Wales) Act 1844 (c.91) s.114; Railways Clauses Consolidation Act 1845 (c.20) s.3; Roads and Bridges (Scotland) Act 1878 (c.51) s.3.

TURNPIKE TRUST. See hereon *Sunk Island Turnpike Road Trustees v Patrington*, 31 L.J.M.C. 18.

Stat. Def., Highways (South Wales) Act 1844 (c.91) s.114.

TURPITUDE. For examination of the meaning of turpitude in the context of the impact on a claim or defence see *RTA (Business Consultants) Ltd v Bracewell* [2015] EWHC 630 (QB).

TUTELAGE. An agreed allowance from husband to wife so long as their son shall be under 21 and be "under the tutelage or care" of the wife, remains payable though the son obtains admission to, e.g. Christ's Hospital, where he will be maintained and educated at very small expense to the wife; for he is still under her protection; and no difference is made by an order of court that the son is to spend half of his holidays with his father and half with his mother (*Rowell v Rowell*, 89 L.T. 288).

TWAITE. "Twaite signifieth a wood grubbed up, and turned to arable" (Co. Litt. 4B).

TWELVE-MONTH. "'A twelve-month' includes all the year according to the kalendar; but 'twelve months' shall be reckoned according to twenty-eight days to each month" (*Catesby's Case*, 6 Rep. 62 a; see also 2 Bl. Com. 141; Dwar. 674, 675). See MONTH; YEAR.

A hiring agreement "for twelve months 'certain', after which time either party shall be at liberty to determine the agreement by giving the other a three months' notice", means that at the end of the twelve months either party may (without notice) determine the agreement, and that the stipulation as to notice applies only if the engagement be prolonged beyond the twelve months (*Langton v Carleton*, L.R. 9 Ex. 57).

Bequest of a twelve-month's wages: see SERVANT; *Re Ravensworth* [1905] 2 Ch. 1, cited YEAR; *Re Sheffield* [1911] Ch. 267.

TWENTY-ONE DAYS' CLEAR NOTICE. In the Companies Act 1929 (c.23) s.117—see Companies Act 1948 (c.38) s.141—(special resolution), the expression means twenty-one clear days exclusive of the day of service and the day of the meeting (*Re Hector Whaling Ltd* [1936] Ch. 208).

TYPE

TYPE. “Types of motor vehicles or . . . trailers” (Road Traffic Act 1960 (c.16) s.167(1)). Specification in a licence of the permitted unladen weight of a trailer is a specification of a “type” of trailer within this section (*Sanderson (Arthur) (Great Broughton) v Vickers* (1964) 62 L.G.R. 350).

“Type not commonly used as a private vehicle” (Finance Act 1954 (c.44) s.16). A mini-van modified only by the attachment of advertisements and a roof-rack for trade purposes does not qualify as such a “type” (*Tapper v Eyre* [1967] 1 W.L.R. 1077).

“Any dog of the type known as the pit bull terrier” (Dangerous Dogs Act 1991 (c.65) s.1(1)(a)). “Type” is not synonymous with “breed”. It has a wider meaning (*R. v Knightsbridge Crown Court, Ex p. Dunne* [1994] 1 W.L.R. 296).

TYPEWRITING. See PRINT.

TYRE. “Tyre” (Motor Vehicles (Construction and Use) Regulations 1969 (SI 1969/321) reg.83(1)(f)). For the purposes of this regulation which governs tread patterns, each tyre on a double wheel is to be treated as a separate tyre (*Goosey v Adams* [1971] R.T.R. 465).

TYTHING. See TITHING.

U

UK COASTAL WATERS. Stat. Def., “means waters adjacent to the United Kingdom to a distance of six miles measured from the baselines from which the breadth of the territorial sea is measured. In this subsection “miles” means international nautical miles of 1,852 metres” (Gangmasters (Licensing) Act 2004 (c.11) s.5(2)).

UK DRIVING LICENCE. Stat. Def., Identity Cards Act 2006 s.26.

UK ESTATE. Stat. Def., Corporation Tax Act 2009 s.936.

UK EXPENDITURE. Stat. Def., Corporation Tax Act 2009 s.1185.

UK FINANCIAL SYSTEM. Stat. Def., Financial Services and Markets Act 2000 s.11 as inserted by Financial Services Act 2012 s.6.

UK POLICE FORCE. Stat. Def., Armed Forces Act 2006 s.375.

UK PROPERTY BUSINESS. Stat. Def., Corporation Tax Act 2009 s.205.

UK RESIDENT. Stat. Def., Corporation Tax Act 2009 s.1319.

UK SECTOR OF THE CONTINENTAL SHELF. Stat. Def., the areas for the time being designated by an Order in Council under s.1(7) of the Continental Shelf Act 1964 (Energy Act 2008 s.79Q, inserted by Marine and Coastal Access Act 2009 s.314).

UK TAX AVOIDANCE SCHEME. Stat. Def., “a scheme or arrangement the purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom tax” (para.4A(3) of Sch.25 to the Income and Corporation Taxes Act 1988 (c.1), inserted by s.82(7) of the Finance Act 2001 (c.9)).

UBERRIMA FIDES. When required in contracts: see per Romer L.J., *Seaton v Heath*, [1899] 1 Q.B. 782, cited **INSURANCE**. See further Marine Insurance Act 1906 (c.41) s.17.

UBICUNQUE. See **QUAMDIU**.

ULTIMATE. “Ultimate” and “final” are synonymous (*Re Wales* [1934] V.L.R. 297).

The “ultimate destination” in s.23 of the Exchange Control Act 1947 (c.14) means the destination which is in the mind of, or intended by the exporter (*Super-heater Co v Customs and Excise Commissioners* [1979] 1 W.L.R. 858).

An ultimate trust is probably that trust of a series of trusts which is the last prescribed, e.g. as distinguished from a resulting trust.

ULTIMATELY. “Person who ultimately becomes entitled to the property” (Conveyancing Act 1881 (c.41) s.43(2)); see *Re Bowlby* [1904] 2 Ch. 685, cited **ACCUMULATION**. Cp. Trustee Act 1925 (c.19) s.31(2); *Re Raine* [1929] 1 Ch. 716.

ULTRA VIRES. A thing is done by a public authority, a company, or a fiduciary person, *ultra vires*, when it is not within the scope of the powers entrusted to such authority, company, or person. The difficulty of applying that definition arises when the circumstances are complex, e.g. if the directors of a railway company should purchase for the company a quantity of “green spectacles as a speculation”, that would

be clearly ultra vires (per Campbell C.J., *Norwich v Norfolk Railway*, 4 E. & B. 443). But if such a board were to build a theatre or chapel, it would, semble, be ultra or intra their powers according to circumstances: "it might be a speculation separate from the railway, and prohibited; or, if works (for the railway) were wanted in a waste place and the company found it to be for their interest to build a town and supply it with all the requisites of inhabitancy, and (in order to secure a permanent supply of workmen of skill and responsibility) added a chapel and a theatre, with religious and secular instruction, it might be for the purpose of the railway, and valid, and though distantly connected, the outlay might be found eventually to increase the profit from the traffic" (per Erle J., *Norwich* 415).

So, gratuities to officers and servants of an ordinary trading company, when made as mere gratuities, are ultra vires, e.g. if made when the business of the company is no longer carried on; *secus*, if reasonably in the nature of stimulants to exertion for the benefit of the company (*Hutton v West Cork Railway*, 23 Ch. D. 654). See further *Stroud v Royal Aquarium Co*, 89 L.T. 243; *Normandy v Ind Coope & Co* [1908] 1 Ch. 84; *Cyclists' Touring Club v Hopkinson* [1910] 1 Ch. 179; *Ashbury Railway Carriage Co v Riche*, L.R. 7 H.L. 653 at 658; *Att-Gen v Great Eastern Railway*, 5 App. Cas. 473; *Att-Gen v Fulham Corp* [1921] 1 Ch. 440.

Observe that "the words 'ultra vires' and 'illegality' represent totally different and distinct ideas. It is true that a contract may have both these defects; but it may also have one without the other, e.g. a bank has no authority to engage, and usually does not engage in benevolent enterprises. A subscription made by authority of the board of directors and under the corporate seal, for the building of a church or college or an almshouse, would be clearly ultra vires, but it would not be illegal. If every corporation should expressly assent to such an application of the funds, it would still be ultra vires but no wrong would be committed and no public interest would be violated" (*Bissell v Michigan Southern Railway*, New York Rep. 258, cited Brice (2nd edn), 51).

Where a Minister had given a notice of intention to confirm, without modification, a purchase notice served under s.19 of the Town and Country Planning Act 1947 (c.51), he acted ultra vires if he then confirmed the notice with modification without, at least, giving fresh notice of the proposed action (*Ealing BC v Minister of Housing and Local Government* [1952] Ch. 856).

So a thing may be against some person's rights, e.g. an undue preference by a railway company without being ultra vires (*Anderson v Midland Railway* [1902] 1 Ch. 369). See hereon *Burdett-Coutts v True Blue Gold Mine Co* [1899] 2 Ch. 616; *Towers v African Tug Co* [1904] 1 Ch. 558; *Manners v St. David's Gold Mines Co* [1904] 2 Ch. 593; *Bisgood v Nile Valley Co* [1906] 1 Ch. 747; the two last cases were distinguished, and *Burdett-Coutts v True Blue Gold Mine Co*, above, was followed in *Fuller v White Feather Reward Co* [1906] 1 Ch. 823, but this last case was overruled by, and *Bisgood v Nile Valley Co*, above, was approved in, *Bisgood v Henderson's Transvaal Estates* [1908] 1 Ch. 743; *Att-Gen v North Eastern Railway* [1906] 1 Ch. 310, cited WATER COMPANY; *Corbett v South Eastern & Chatham Railway* [1906] 2 Ch. 12; *Att-Gen v Mersey Railway* [1906] 1 Ch. 811, cited INCIDENT, applying *London CC v Att-Gen* [1902] A.C. 168, cited POSITION; *Att-Gen v Pontypridd* [1906] 2 Ch. 257, cited UNLESS; *Att-Gen v Hastings*, 67 J.P. 165; *Amalgamated Society of Railway Servants v Osborne* [1910] A.C. 87, cited TRADE UNION; *Famatina Development Corp v Bury* [1910] A.C. 439; *Eccles v South Lancashire Tramways Co* [1912] A.C. 465,

cited *TRAMWAY: Koffyfontein Mines v Moseley*, 55 S.J. 551. A regulation forbidding golf on Mitcham Common to anyone not an inhabitant of Mitcham is ultra vires: see *Mitcham Common Conservators v Cox* [1911] 2 K.B. 854. See also *Deuchar v Gas Light, etc. Co* [1925] A.C. 691.

Cp. ILLEGAL.

UMBRELLA COMPANY. Stat. Def., in the context of open-ended investment company, Income and Corporation Taxes Act 1988 s.468A as inserted by Finance (No.2) Act 2005 s.16.

UMPIRE. The true meaning of “umpire” is a person to decide between two arbitrators; but it may be used as synonymous with “arbitrator”, e.g. where the submission is to an “arbitrator or umpire” (*Re Eyre and Leicester* [1892] 1 Q.B. 136). See hereon *Baring-Gould v Sharpington Syndicate* [1899] 2 Ch. 91, cited CALL UPON.

UNABLE. A company “unable to pay its debts” (Companies Act 1862 (c.89) s.79(4), Companies Act 1985 (c.6) ss.517, 518) connotes that the inability “must be inability to pay debts absolutely due, i.e. debts on which a creditor can go to the company and instantly demand to be paid” (per James V.C., *Re European Life Assurance*, L.R. 9 Eq. 127).

“Unable to pay its debts” (Insurance Companies Act 1974 (c.49) s.50). The fact that an insurance company does not have sufficient liquid assets to pay its present debts where repayment has not been demanded, does not necessarily mean that it is “unable to pay its debts” within the meaning of this section (*Re Capital Annuities* [1979] 1 W.L.R. 170).

“The company is unable to pay its debts” (Insolvency Act 1986 (c.45) s.123(1)(e)). Failure to pay a debt which there were no substantial grounds for disputing was sufficient evidence of inability to pay for the purposes of this section (*Taylor’s Industrial Flooring v M&H Plant Hire (Manchester)* [1990] B.C.C. 44).

“Unable immediately” to perform obligations (Courts (Emergency Powers) Act 1943 (c.19) s.1) did not mean “unable in the prudent course of management”: see *Re A Legal Charge, November 26, 1937* [1949] 1 All E.R. 477.

“Unable to go in person” (Representation of the People Act 1949 (c.68) s.12). Electors “unable to go in person to the polling station” were those who could not reasonably be expected to go, and covered the student who would have had to spend 3 on a five-hour journey (*Moore v Electoral Registration Officer for Borders* (1980) S.L.T. (Sh. Ct.) 39).

The words “unable to walk or virtually unable to do so” (Social Security Act 1975 (c.14) s.37A, as inserted by Social Security Pensions Act 1975 (c.60) s.22(1)) did not cover a person who, being blind and suffering from other disabilities, was only able to walk outside with the help of an adult guide (*Lees v Secretary of State for Social Services* [1985] 2 W.L.R. 805). The meaning of “virtually unable to walk” is a question of law. The base point is a total inability to walk, which can be extended to take in people who can technically walk but only to an insignificant extent. An inability or virtual inability to walk cannot be established merely on the bases of for instance, an inability to walk to the shops or to a bus stop (*Social Security Decision*, No.R (M) 1/91).

A person can be “unable” to do something whether or not he has tried to do it (*Cranfield v Bridgegrove Ltd* [2003] 1 W.L.R. 2441, CA).

“In my view, the phrase ‘unable to’ in the context of driving, does not mean ‘not entitled to’ drive, but ‘incapable of’ driving (for medical reasons, or physically for

example). An ‘uncompromisingly’ literal approach, even if it were a valid one to take, does not therefore lead to the interpretation contended for by the Claimant. I consider on its true construction, the genuine reason exception to paragraph 7 is limited, given the context, to reasons beyond the control of the firefighter in question.” (*Vickers v London Fire & Emergency Planning Authority* [2010] EWHC 1855 (QB).)

“Unable to act”: see INABILITY.

See UNWILLING.

UNABLE OR UNWILLING. As to this phrase in conditions of sale, see UNWILLING.

UNABLE TO PAY ITS DEBTS. “It is in my judgment clear from *Eurosail* and its approval of *Cheyne Finance* that the balance sheet test in section 123 (2) [of the *Insolvency Act 1986*] is not excluded merely because a company is for the time being in fact paying its debts as they fall due.” (*Bucci v Carman (Liquidator of Casa Estates (UK) Limited)* [2014] EWCA Civ 383.)

UNADVANCED. “Unadvanced member” of a building society: see *Re Middlesbrough Building Society*, 58 L.J. Ch. 771. See WITHDRAWAL.

UNAMBIGUOUS, EASILY IDENTIFIABLE AND CLEARLY LEGIBLE. The requirements of the Price Marking Order 1991 (No.1382) arts 3 and 8 were satisfied if the price was clearly and unmistakably indicated on or alongside goods with or without assistance from the retailer (*Drewery v Ware-Lane* [1960] 1 W.L.R. 1204 applied) (*Allen v Redbridge LBC* [1994] 1 W.L.R. 139).

UNANIMOUS. “Unanimous” determination of creditors and contributories (*Companies Winding-up Rules 1890* r.63(2)) referred to the unanimity of all the creditors and contributories at the meetings, and not to unanimity in the result of the two meetings (*Re Johannesburg Land & Gold Trust* [1892] 1 Ch. 583, cited MAY).

UNASCERTAINED. “Unascertained or future goods” (*Sale of Goods Act 1893* (c.71) s.18 r.5(1)): see *Carmichael v Macbeth*, 4 Fraser 345; GOODS; *Forster v Blyth* [1926] Ch. 494.

UNAUTHORISED. “Unauthorised access” (*Computer Misuse Act 1990* (c.18) s.17). No offence under s.17(5) of the 1990 Act was committed where police officers, who were entitled to secure access to the Police National Computer extracted information from it for their own personal use (*DPP v Bignell* [1998] 1 Cr.App.R. 1).

UNAVOIDABLE. “Unavoidable accident”: see INEVITABLE.

“Unavoidable cause” of absence from work of a workman, under s.10(iii) of the *Workmen’s Compensation Act 1925* (c.84), did not include holidays such as “wakes week”, Christmas, Easter, etc. or short stoppages on account of accidents to the machinery or to a canal adjoining the works, inasmuch as they were not ejusdem generis with illness: see per Fletcher Moulton L.J., *Bailey v Kenworthy* [1907] 1 K.B. 465. Neither did it include a strike: see *Price v Guest, Keen & Nettlefolds Ltd* [1917] 1 K.B. 780, affirmed [1918] A.C. 760.

“Unavoidable cause” for absence from school (*Education Act 1944* (c.31) s.39(2)(a)) must refer to a cause which affects the child and has in it an element of emergency and not to a case where, e.g. a widowed mother is unable to do the housework and the child is the only person available (*Jenkins v Howells* [1949] 2 K.B. 218).

“Unavoidable” (*Food and Drugs Act 1955* (c.16) s.3(3)). To establish a defence under this section to a charge of selling food containing extraneous matter it is necessary to show that the presence of the matter was a consequence of the process of

collection or preparation of food, and that it could not have been avoided by human agency. It is not sufficient to show that all reasonable care to avoid its presence was taken (*Smedleys v Breed* [1974] A.C. 839).

"Unavoidable hindrance" is very unusual in a charterparty exception (per Esher M.R., *Crawford v Wilson*, 12 T.L.R. 171, which case see for an example of such a hindrance; see also *Gardiner v Macfarlane*, 20 Sess. Cas. 4th Ser. 427, cited CONTROL). See further *Larsen v Sylvester* [1908] A.C. 295, cited WHATSOEVER.

An exception, in a charterparty, of unavoidable hindrances, held not to apply to unavoidable hindrances occurring before the commencement of the voyage (*Monroe Bros Ltd v Ryan* [1935] 2 K.B. 28).

Where the circumstances which caused the delay existed before the charter was concluded, and could have been discovered by inquiry, they did not amount to "unavoidable hindrances" (*The Angelia, Trade and Transport v Iino Kaiun Kaisha* [1973] 1 W.L.R. 210).

"It has been decided that a condition of sale for payment of interest, if by reason of any 'unavoidable obstacle' the contract could not be completed by a day named, did not apply to a delay occasioned by the state of the title; and therefore interest was not payable under the condition" (Sug. V. & P. (14th edn), 635, citing *Birch v Podmore* Unreported). So, of the phrase "unforeseen or unavoidable obstacles" (*Monk v Huskisson*, 4 Russ. 121, fn.; but see on this Sug. V. & P. (14th edn), 635). See further Dart, 719.

"Unavoidable delay in the completion of a journey": see DELAY.

UNBAPTISED. A child baptised with water in the name of the Trinity by a Wesleyan minister, not authorised to administer the rite of baptism, was not "unbaptised" within the Burial Service, as incorporated into the Act of Uniformity 1662 (c.4) (*Escott v Mastin*, B. & F. 4).

UNBORN. "Unborn", in Trustee Act 1850 (c.60) s.30, Trustee Act 1893 (c.53) and s.31 and Trustee Act 1925 (c.19) s.48, means "non-existent in the character to entitle a person to the property in question" (per Jessel M.R., *Basnett v Moxon*, L.R. 20 Eq. 185). Among other illustrations the learned judge said, "In a sense, the future heir-at-law of a living person, although he may be a living man, is not a living heir. As heir, he comes into existence at a future period".

"Person unborn" (Variation of Trusts Act 1958 (c.53) s.1(1)(c)) means any future person who would, if there was no variation, become interested under the trusts of the instruments which it is sought to vary (*Re Cohen's Settlement Trusts, Eliot-Cohen v Cohen* [1965] 1 W.L.R. 1229).

See BORN; LIVING; TO BE BORN.

UNCERTAIN. "Uncertain interest" in land (Statute of Frauds 1677 (c.3) s.3) relates "only to interests which are uncertain as to the time of their duration" (per Lee C.J., and Denison J., *Wood v Lake*, Sayer, 3).

(Law of Property Act 1925 (c.20) s.184; the word is here used in its ordinary acceptation as denoting a reasonable element of doubt (*Hickman v Peacey* [1945] A.C. 304, 324). See also *Re Bate* [1947] L.J.R. 1409; *Re Comfort* [1947] V.L.R. 237.

"Uncertain rent": see CERTAIN RENT.

See VAGUE.

UNCERTAINTY. In indictments and charges, etc.: see *R. v Jones* [1921] 1 K.B. 632.

UNCHASTITY

A condition in a will for forfeiture of the interest of a beneficiary if she should marry a person “not of Jewish parentage” held void for uncertainty (*Clayton v Ramsden* [1943] A.C. 320). A like condition on marrying a person “not of the Jewish faith” also held void for uncertainty, following dicta in *Clayton v Ramsden*, above (*Re Donn* [1944] Ch. 8; *Re Myers* [1947] N.Z.L.R. 828 *Ex p. Perel* (1948) 3 S.A.L.R. 195 (“Jewish religion” uncertain)). But see *Re Harris* [1950] V.L.R. 182, in part distinguishing *Clayton v Ramsden*, above.

The expression “member of the Jewish faith” is one of complete uncertainty and a gift over in a will on marriage to such a person is void (*Re Moss's Will Trusts*, *Moss v Allen*, 114 L.J. Ch. 152). See also *Re Wolffe* [1953] 1 W.L.R. 1211. Gifts expressed to be given on marriage to a person of “Jewish race” failed because it was held to be impossible to give sufficient meaning to the term (*Re Tarnpolsk*, *Barclays Bank v Hyer* [1958] 1 W.L.R. 1157).

Where, under a settlement, the trustees were to pay the income to a beneficiary “so long as he shall be of the Jewish faith” and shall be married to “a wife of Jewish blood by one or both of her parents”, any doubt to be resolved by either of two designated rabbis, there was held to be no uncertainty because the settlor had made specific provision for the resolution of any doubt or difficulty with regard to the qualifying conditions (*Re Tuck's Settlement Trusts* [1976] 1 All E.R. 545).

A provision in a will that any beneficiary who might at any time become a convert to the Roman Catholic religion should thereupon ipso facto forfeit the right to any income or capital in the testator's estate was held not uncertain, for conversion was evidenced by the overt act of baptism into the Roman Catholic faith; but the words “ipso facto” were held to point to the existence of an interest at the time of the act; consequently the clause did not apply where a beneficiary had become a convert during the testator's lifetime (*Re Evans* [1940] Ch. 629).

Where a life interest was given by will to A with a provision that the payments to her should continue only so long as she should continue to reside in Canada, the last-mentioned provision was construed as a condition subsequent and held void for uncertainty (*Sifton v Sifton* [1938] A.C. 656). See also *Re Borwick* [1933] Ch. 657, cited PUBLIC POLICY.

Contracts: see HIRE-PURCHASE TERMS; SUBJECT TO.

UNCHASTITY. Slander of Women Act 1891 (c.51) s.1: includes lesbianism (*Kerr v Kennedy* [1942] 1 K.B. 409).

UNCLE. Stat. Def., “the brother or half-brother of a person's parent” (Sexual Offences Act 2003 (c.42) s.27).

UNCLEANNESS. See IMMORAL.

UNCONDITIONAL. “Unconditional order in writing”, to constitute a bill of exchange: see *Bavins v London & SW Bank* [1900] 1 Q.B. 270. As regards a cheque, see *Thairwall v Great Northern Railway* [1910] 2 K.B. 509, cited DIRECTOR; see also *Roberts & Co v Marsh* [1915] 1 K.B. 42, where it was held that the words “to be retained”, written on a cheque by the drawer, did not prevent it being an unconditional order to pay so far as the bank was concerned.

The natural, first and usual meaning of the word “unconditionally” is “without conditions”—that is, conditions well known to the parties' advisers which might have been stipulated (*Smith v Smith*, 145 L.T. 23).

Where there was a testamentary direction to A to pay debts and legacies and other matters, “and to enable him to do all this, I ‘bequeath unconditionally’ unto him all my

estates and landed property"; held, that "unconditionally" did not mean without any condition annexed as to the payment of legacies, but meant an absolute ownership of the fee simple for the purpose of doing that which he is ordered to do (*Thomson v Eastwood*, 2 App. Cas. 215, 229).

UNCONSCIONABLE BARGAIN. Old age with accompanying diminution of judgment can satisfy the requirements for setting aside a sale at an undervalue as an unconscionable bargain; requirements which were laid down in *Fry v Lane* (1888) 40 Ch. D. 312 (*Watkin v Watson-Smith*, *The Times*, July 3, 1986).

UNCONSCIONABLE DAMAGES. As to when agreed damages are extravagant, exorbitant, or unconscionable, so as to prevent them from being regarded as liquidated damages, see per Lord Davey, *Clydebank Co v Yzquierdo y Castaneda* [1905] A.C. 6, cited LIQUIDATED DAMAGES.

UNCONTROLLABLE. "Uncontrollable impulse" is no defence in criminal proceedings unless it is the outcome of actual insanity: see *R. v Holt*, 15 Cr.App.R. 10; see further *R. v Jolly*, 83 J.P. 296.

UNCONTROLLED. See DISCRETION. Cp. CONTROL.

UNCULTIVATED. "Waste or uncultivated land": see *Campbeltown Shipbuilding Co v Robertson*, 35 Sc. L.R. 722, cited WASTE GROUND.

UNCUSTOMED. Uncustomed goods include goods allowed to enter free of duty which are dutiable when found in the possession of persons not entitled to exemption from duty (*M'Queen v M'Cann* (1945) S.C. (J.) 151).

UNDEFINED. "Undefined time" (Partnership Act 1890 (c.39) s.32(c)): see *Moss v Elphick* [1910] 1 K.B. 846, cited PARTNERSHIP.

UNDER. Semble, a power to carry pipes, etc. across a public road is different from a power to carry them "under" the road (*South Eastern Railway v European, etc. Telegraph Co*, 9 Ex. 363). Cp. UNDERGROUND.

Power to erect poles "on, in, over, or under" a street: see *Escott v Newport* [1904] 2 K.B. 369, cited VEST.

"Under, in, upon, over, along, or across": see *South Eastern Railway v National Telephone Co*, 77 L.J. Ch. 679, cited ACROSS.

"Constructed under": see *Wakefield Light Railway v Wakefield* [1907] 2 K.B. 256, cited RAILWAY.

"Under the direction" of a qualified medical practitioner, under s.1(2) of the Midwives Act 1902 (c.17): see *Davis v Morris* [1923] 2 K.B. 508. See now Midwives Act 1951 (14 & 15 Geo. 6, c.53) s.9. See also *Re Unite*, 75 L.J. Ch. 163, cited DIRECTION.

Where a special Act incorporates a public Act, things done pursuant to the latter are done "under" the former (*London & North Western Railway v Runcorn* [1898] 1 Ch. 561, cited SEWER).

Transfer "under" the Electricity (Supply) Act 1919 (c.100): see *R. v Minister of Labour* [1924] 2 K.B. 210.

"Claims arising under this Act" (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17) s.17(2)): see *Tideway Investment & Property Holdings v Wellwood* [1952] Ch. 791.

Burial ground sold "under the authority of an Act" (Disused Burial Grounds Act 1884 (c.72) s.5): see *Att-Gen v London Parochial Charities* [1896] 1 Ch. 541, cited SET APART.

Compensation under Workmen's Compensation Act 1897 (c.37) was "paid under" the Act, within s.6, where the claim was settled by agreement between employer and workman, as well as when it was settled by an award (*Thompson v North Eastern Marine Engineering Co* [1903] 1 K.B. 428).

"Under this Act" (Misuse of Drugs Act 1971 (c.38) s.27(1)). A common law conspiracy to infringe s.4 of this Act, a statutory provision creating a substantive offence, was held to be of such a nature and character as to constitute an offence "under this Act" for the purposes of s.27 (*R. v Kemp* (1979) Cr.App.R. 330).

A workman "works under a contract with an employer" (Employers and Workmen Act 1875 (c.90) s.10) even though he "has not contracted directly with an employer but has been engaged by an agent of the employer to work for the employer, namely by a butty-man or a ganger, or to meet the case of an apprentice, or other similar cases" (per Smith L.J., *Marrow v Flimby, etc. Co* [1898] 2 Q.B. 588). "There is one obvious instance of such working under a contract, namely that of a volunteer who, without communication with the employer, gives his services either to supplement or replace the workman actually employed" (per Rigby L.J., *Marrow*). In *Marrow v Flimby* the workman was employed in a mine by a person who had contracted to sink a shaft therein, and, whilst so employed, received injury, and it was held that he was working "under a contract" with the contractor, and not with the mine-owners, a ruling which was followed in *Fitzpatrick v Evans* [1902] 1 K.B. 505.

"Entitled under", e.g. a will: see *Collingwood v Stanhope*, L.R. 4 H.L. 43; *Re Crawshaw* [1891] 3 Ch. 176, cited SETTLE.

Money paid "under an execution . . . to avoid sale" (s.11(2) of the Bankruptcy Act 1890 (c.71); superseding *Re Pearson*, 3 Morr. 187) had to be (1) the execution debtor's own money, (2) paid under direct stress of the execution, and (3) to avoid an actual sale, and not a mere re-seizure (*Bower v Hett* [1895] 2 Q.B. 337). See Bankruptcy Act 1914 (c.59) s.41.

Guarantee of payment "under the said policy" does not include a payment under an arrangement "in lieu" of the policy (*Mortgage Insurance v Pound*, 64 L.J.Q.B. 394).

"Payment . . . under or in consequence of a policy" (Road Traffic Act 1930 (c.43) s.36(2), Road Traffic Act 1972 (c.20) s.154(1)): see *Glasgow Royal Infirmary v Municipal Mutual Insurance* (1953) 69 Sh. Ct. Rep. 297.

Persons "who are for the time being, under the 'settlement', trustees with future power of sale" (Settled Land Act 1925 (c.18) s.30(iv)): "'under' must be read as meaning either 'subject to', or 'bound by', a future trust for sale; or trustees of a settlement 'which contains' a future trust for sale" (per Buckley J., *Re Jackson* [1902] 1 Ch. 258, cited TRUSTEE).

Property the subject of a power of appointment passes "under or by virtue" of the power, and not of the instrument exercising it (*Att-Gen v Chapman* [1891] 2 Q.B. 526, citing *Charlton v Att-Gen*, 4 App. Cas. 427, *Braybrooke v Att-Gen*, 4 H.L. Cas. 150, *Att-Gen v Floyer*, 9 H.L. Cas. 477, and *Att-Gen v Smythe*, 9 H.L. Cas. 497, all cited PREDECESSOR; per Wright J., on definition of SETTLEMENT, *Att-Gen v Dodington*, 66 L.J.Q.B. 441; on appeal [1897] 2 Q.B. 373); cp. *Jackson v Commissioner of Stamps* [1903] A.C. 350, cited ABSOLUTELY ENTITLED.

A curate in the Church of England was not employed "under any contract of service" within the meaning of Pt 1 of the National Insurance Act 1911 (c.55), and was not therefore compulsorily insurable under the Act: see *Re Church of England Curates Employment* [1912] 2 Ch. 563.

“Under its trade name”, within proviso to s.14(1) of the Sale of Goods Act 1893 (c.71): see *Baldry v Marshall* [1925] 1 K.B. 260.

“Under proper conditions”, within s.14 of the Trade Union Act 1871 (c.31) and Sch.1 para.6: see *Dodd v Amalgamated Marine Workers' Union*, 93 L.J. Ch. 100.

“Under the trusts and limitations of this my will”: see *Re Trevanion* [1910] 2 Ch. 538, cited ACTUAL.

“Under” is sometimes more aptly translated by the expression “pursuant to” than by the phrase “by virtue of” (*R. v Clyne, Ex p. Harrap* [1941] V.L.R. 200).

Place of profit “under the company”: see *Astley v New Tivoli* [1889] 1 Ch. 151, cited PLACE.

Offences set out in an enactment were offences “under” that enactment, and the offence of conspiracy was excluded from being “under” the Act by implication (*R. v Secretary of State for the Home Department, Ex p. Gilmore* [1998] 1 All E.R. 264).

“I would hold that a decision of a judge which he had no jurisdiction to make was not a decision ‘under the section’ within the meaning of section 44(7) [of the Arbitration Act 1996]”. (*Cetelem SA v Roust Holdings Ltd* [2005] EWCA Civ 618 at [28] per Clarke L.J.).

A reference to matters arising “under” a charterparty in its arbitration clause is to be given a broad construction (*Fiona Trust & Holding Corporation v Privalov* [2007] UKHL 40).

“Under arrest”: see ARREST.

“Under authority”: see AUTHORITY.

“Under command”: see COMMAND.

“Under control”: see CONTROL.

“Driving under the influence of drink”: see DRIVE.

“Acting under”: see ACTING.

“Under the authority”: see BY AUTHORITY.

“Passing under”: see PASSING.

“Under the same circumstances”: see SAME.

“Salvage under this Act”: see SALVAGE.

Company “incorporated under” an ACT: see BY.

Property “vested under” an Act: see VESTED.

“Under or by virtue”: see PURSUANCE.

“Under any circumstances whatsoever”: see IN NO CASE.

“Sales under the Lands Clauses Consolidation Act 1845 (c.18)”: see SALE.

“Under the supervision of the captain”: see STOWAGE.

See CLAIMING UNDER; THROUGH; UNLESS; WITHIN OR UNDER; IN RESPECT OF; MADE UNDER.

UNDER HAND. Agreement “under hand only” (as regards stamp, on which see EVIDENCE OF A CONTRACT) means otherwise than by deed; therefore, an unsigned document embodying the binding terms of a contract requires an agreement stamp (*Walker v Rostron*, 11 L.J. Ex. 173; *Chadwick v Clarke*, 14 L.J.C.P. 233). In this last case Cresswell J. said, “an unsigned agreement may be binding provided it does not require a signature by the Statue of Frauds”. See SIGNED.

“Under the hand of the appellant” (Charitable Trusts Act 1860 (c.136) s.11), as including “under the hand of his agent”: see *Re Diptford Parish Lands* [1934] Ch. 151.

“Under my hand” held not applicable to an unsigned writing (*Waterson's Trustees v St. Giles' Boys' Club* (1943) S.C. 369).

“Under his hand”: see HIS HAND.

“29. However it arises, it is plain that liability for mis-selling would not arise ‘under’ the contract of insurance. The insurer’s primary liability under an insurance policy is its liability to pay claims in the event of an insured loss: see, e.g. *Sprung v Royal Insurance (UK) Ltd* [1997] CLC 70 at [80].” (*PA(GI) Ltd v GICL 2013 Ltd* [2015] EWHC 1556 (Ch).)

UNDER PROTEST. Appearances to a writ “under protest” is one denying the obligation to appear at all, e.g. when the jurisdiction of the court is objected to (*The Vivar*, 2 P.D. 29; *Mayer v Claretie*, 7 T.L.R. 40; *Firth v Palmer* [1893] 1 Q.B. 768), or a partner “may enter an appearance under protest, denying that he is a partner” (the old R.S.C. Ord.48A r.7, see now R.S.C. Ord.81 r.4(2)). As to a conditional appearance, see R.S.C. Ord.12 r.7.

Payment under protest: “It is said that the money was received by the petitioner and the receipt given under protest. These words are often used on these occasions, but they have no distinct technical meaning, unless accompanied with a statement of circumstances, showing that they were used by way of notice or protest, reserving to the party by reason of such circumstances, a right to a taxation, notwithstanding such payment. The words have no distinct meaning by themselves, and amount to nothing unless explained by the proceedings and circumstances” (per Langdale M.R., *Re Massey*, 8 Bea. 462). See also *Re Dearden*, 9 Ex. 210. See further *Re Cheesman* [1891] 2 Ch. 289, and *Re Williams*, 65 L.T. 68, both cited SPECIAL CIRCUMSTANCES, justifying the taxation of a solicitor’s costs after payment.

“A tender may be effectually made ‘under protest’, which imports not to impose a condition on acceptance of the money, but merely to prevent the fact of payment operating as an admission of the claim” (Leake, 746, citing *Scott v Uxbridge Railway*, L.R. 1 C.P. 596; *Sweny v Smith*, L.R. 7 Eq. 324; *Greenwood v Sutcliffe* [1892] 1 Ch. 1).

UNDER WAY. In Regulations for Preventing Collisions at Sea 1879: “A vessel making way through the water is under way. A sailing vessel hove-to is under way (*The Rosalie*, 5 P.D. 245; *The City of London Swabey*, 248). A vessel driven from her anchors in a gale of wind, even if wholly unmanageable, is under way (*The George Arkle*, Lush. 382; but see *The Buckhurst*, 6 P.D. 152, cited INEVITABLE; and a vessel dropping with the tide although she may have an anchor overboard, is under way so long as she is not held by her anchor (*The Esk*, L.R. 2 A. & E. 350)” (1 Maude & P. 589). “The true criterion as to the application of the Regulation must be whether the vessel be actually holden by, and under the control of, her anchor or not. The moment she ceases to be so, she is in the category of a vessel ‘under way’ and must carry the appointed coloured lights” (per Sir R. Phillimore, *The Esk*, L.R. 2 A. & E. 353; see now Regulations for Preventing Collisions at Sea 1910 (S.R. & O., Rev. Vol.XIV, p.515). See further *The Romance*, 83 L.T. 488, cited AT ANCHOR; TOW.

In Regulations for Preventing Collisions at Sea 1910, a vessel is “under way” “when she is not at anchor, or made fast to the shore, or aground”; see the Preliminary Rules thereto.

A sailing barge having her mast lowered, her anchor on the ground, and dredging down Thames, is not a sailing vessel “under way”, within Rules for the navigation of the River Thames 1880 art.6 (*The Indian Chief*, 14 P.D. 24); nor is she “at anchor” within art.7.

See COMMAND; SAIL; STATIONARY. See *The Palembang*, [1829] R. 246.

UNDERGROUND. A statutory power to lay, e.g. pipes or wires, “underground” in streets, involves authority to open the streets for that purpose (*Montreal v Standard Light Co* [1897] A.C. 527). Cp. UNDER.

“Underground bakehouse”: Stat. Def., Factory and Workshop Act 1901 (c.22) s.101(3). See hereon *Schwerzerhof v Wilkins* [1898] 1 Q.B. 640, cited USED. See further *Evans v Gallon*, 68 J.P. 537. See now BASEMENT BAKEHOUSE.

“Underground trespass”: see *Bulli Coal Mining Co v Osborne* [1899] A.C. 351.

“Underground water”: see SUBTERRANEAN WATER; INJURIOUSLY AFFECTED; *Acton v Blundell*, 13 L.J. Ch. 289, cited INJURY. See further *Salt Union v Brunner* [1906] 2 K.B. 822.

UNDERGROUND WORKS.

“40. In my judgment s.3(2) has no application to the work that has been carried out. The purpose of the 1931 Act is, as the long title states, ‘to provide for the preservation and for restricting the user of certain squares gardens and enclosures in the administrative county of London and for other purposes’. I agree with Mr Straker that s.3(2) is to be construed as allowing unrestricted use of the subsoil of a protected square so long as the square is unaffected or, provided there is consent, use of the subsoil of the square which brings with it such use of the surface as is reasonably necessary and proper for such subsoil use. Such use of the surface as can occur must be for an underground purpose, namely for the construction and maintenance of underground works and underground buildings or for the erection of temporary buildings and for entrances exits and ventilations shafts in relation to such works and buildings.

41. In my view ‘underground’ in s.3 means below the surface of the ground. That accords with its ordinary English meaning as defined by the *Oxford English Dictionary*; and the definitions of it given in the *Collins English Dictionary* are not inconsistent with this interpretation. Indeed Collins gives ‘below the surface’ as a synonym for ‘below ground’. I reject Mr Maurici’s submission that works which are situated below the ground level of a protected square are underground works for the purposes of the 1931 Act, irrespective of whether they are, or are not, exposed to the sky.

42. There is, in my view, force in Mr Straker’s submission that underground works and buildings carry the same meaning in both parts of s.3(2). However if the Claimant’s contention that an underground work can be open and on the surface is correct, then underground works are given a different meaning in the second part of s.3(2) from the first part. Section 3(2) refers in its first part to owners not being prevented from using the subsoil for the construction and maintenance of underground works and buildings. It therefore contemplates the subsoil as the place for such work. The surface is separately referred to by the Act. As a matter of ordinary English the subsoil is always under something, namely the topsoil.

43. The Royal Commission recommended that any proposals in connection with the use of the subsoil, if they affected the surface, should require consent (para.103(4)(c); and see para.69 on the construction of underground garages). I agree with Mr Straker that this is only consistent with the second part of s.3(2) dealing with something underneath the ground.

44. In my judgment the surface use of the protected square by the Claimant was not for or in relation to the construction and maintenance of underground works or buildings. None of the works (the courtyard, the lightwell, the bridge or the stairs) are

UNDERLEASE

underground works or buildings for the purposes of s.3(2) of the 1931 Act.” (*Eliterank Ltd, R. (on the application of) v Royal Borough of Kensington & Chelsea* [2015] EWHC 220 (Admin).)

UNDERLEASE. “An assurance for a period less than the whole term is an underlease, and not an assignment (*Cottee v Richardson*, 7 Ex. 143, cited TERM); though an assurance purporting to be an underlease, but which comprises the whole term, may be an assignment (*Langford v Selmes*, 3 K. & J. 220; *Beardman v Wilson*, L.R. 4 C.P. 57)”; per curiam *Bryant v Hancock* [1898] 1 Q.B. 716, cited ASSIGNS.

“Where a person parts with all his estate in land, as where he purports to demise for a period co-extensive with his own interest or longer, the transaction is in law an assignment, although purporting to be a demise; an underlease for the whole of a residue of a term is in law an assignment”; such a sub-lessor cannot distrain for rent in arrear under the instrument (per Swinfen Eady J., *Lewis v Baker* [1905] 1 Ch. 46, citing *Parmenter v Webber*, 8 Taunt. 593, and *Preece v Corrie*, 6 L.J.(O.S.) C.P. 205). See Law of Property Act 1925 (c.20) Pt V.

Though a covenant against assigning is not broken by an underlease (see ASSIGN); yet a covenant against underletting will, generally, restrain an assignment (*Greenaway v Adams*, 12 Ves. 395; but see on this case *Re Doyle and O'Hara* [1899] 1 Ir. R. 113, cited SET).

An underlease whose head lease had been disclaimed by the head lessor's trustee in bankruptcy was held properly described, in a contract for sale, as an “underlease” (*Re Thompson and Cottrell's Contract* [1943] Ch. 97).

A covenant not to “underlease” is broken by a letting from year to year (*Timms v Baker*, 49 L.T. 106).

Letting lodgings has been held not to be a breach of a covenant not “to grant any underlease for any term whatsoever, or let, assign, transfer, set over, or otherwise part with”, without the licence of the lessor; for “the covenant”, said Lord Ellenborough, “can only extend to such under-letting as a licence might be expected to be applied for; and whoever heard of a licence from a landlord to take in a lodger?” (*Doe d. Pitt v Laming*, 4 Camp. 77). But the same learned judge ruled otherwise where the covenant was not to let the premises, or any part thereof (*Roe v Sales*, 1 M. & S. 297), and the ruling itself has been questioned in a later case (per Parke and Alderson BB., *Greenslade v Tapscott*, 3 L.J. Ex. 328), where land was suffered to be occupied by more persons than one. On principle it would seem that if the covenant be not to sublet the premises or any part, the letting lodgings would be a breach.

Merely letting a purchaser into possession of leaseholds he paying no rent and incurring no tenant's obligations to the vendor, is not an assignment of the term, nor is it an under-letting of the premises, within a clause of forfeiture (*Horsey v Steiger* [1898] 2 Q.B. 259, cited LIQUIDATION); but such an act would be a forfeiture if the covenant were extended to not “parting with the possession” of the premises (*Horsey v Steiger* [1898] 2 Q.B. 259, on which latter phrase see further ASSIGN).

Will not “assign or underlet”: see *Re Riggs* [1901] 2 K.B. 16, cited ASSIGN.

A person who has a right to have a charge by way of legal mortgage is an “underlessee” within s.146(4) of the Law of Property Act 1925 (c.20) (*Re Good's Lease, Good v W. (Trustee) and W.* [1954] 1 W.L.R. 309; *Grand Junction Co v Bates* [1954] 2 Q.B. 160).

See DERIVATIVE LEASE; LEASE; LEASEHOLD REVERSION; LESSEE; LEASE; UNREASONABLY.

UNDERLYING. Stat. Def., Acquisition of Land Act 1981 (c.67) Sch.2 para.1.

UNDERLYING TAX. Stat. Def., Income and Corporation Taxes Act 1970 (c.10) s.500.

UNDERNEATH. “Underneath or which follows” the signature (Wills Act Amendment Act 1852 (c.24) s.1): see *In the Goods of Smith* [1931] P. 225; *In the Goods of Long* [1936] P. 166.

UNDERPIN. See *Stevens v Metropolitan District Railway*, 29 Ch. D. 60, especially judgment of Baggallay L.J.

UNDERSTAND. Semble, “it is understood” connotes the same as “it is agreed” (*Higginson v Weld*, 14 Gray, 170). But in *Hill v Fox*, (4 H. & N. 364) the court said, “it is difficult to say what an ‘understanding’ is”. It has been said that “understandings are always misunderstood”.

“It is difficult to see what effect in law is to be found in an understanding” (per Viscount Simonds *Sterling Engineering Co v Patchett* [1955] A.C. 534).

Where, in a letter to clients, a firm of solicitors records an “understanding” that certain legal work shall be done by them, and the client replies that he is prepared “to accept it”, the use of the word “understanding” was not enough to create any contractual relationship between a solicitor and layman (*Milner (J. H.) & Son v Bilton (Percy)* [1966] 1 W.L.R. 1582). But in *Campbell v IRC* [1970] A.C. 77, although it was argued that an “understanding” is binding in honour only, it was held that this word is no less appropriate to express a legally binding agreement than the word “agreement”.

“‘Understanding’ a problem, so as to have the capacity to decide what to do about it, requires, on this approach, the mental ability: (i) to recognise the problem; (ii) to obtain, receive, take in, comprehend and retain information relevant to the problem and its solution; (iii) to believe that information; and (iv) to weigh (evaluate) that information in the balance so as to arrive at a solution (decision).” (*Sheffield City Council v E.* [2004] EWHC 2808 at [134] (Fam) Munby J.)

UNDERTAKE. “Undertake, execute, hold, or enjoy” a contract (House of Commons (Disqualification) Act 1782 (c.45) s.1) means, as regards “undertake”, to enter into; as regards “execute”, to take on oneself the execution of another’s contract; as regards “hold”, to take a transfer of another’s contract; and as regards “enjoy”, a *cestui que trust* who is to enjoy the benefit of the contract; but the phrase does not, under any or either of its words, include a contract which has been executed and under which nothing remains to be done except paying the contractor (*Royse v Birley*, L.R. 4 C.P. 296, cited PUBLIC SERVICE, especially judgment of Brett J.).

“Undertake”, in s.42 of the Public Health Act 1875 (c.55), “means that the local authority either expressly resolve to do the thing mentioned in the section or in practice so acted as to show that they had resolved to do it” (per McCardie J., *Leak v Epsom Rural DC* [1922] 1 K.B. 383 at 392, cited REASONABLE MEANS). See Public Health Act 1936 (c.49) s.72.

“Undertakes to certify”, under s.62 of the Trade Marks Act 1905 (c.15), as amended by s.12 and Sch.2 of the Trade Marks Act 1919 (c.79), meant “makes it its business to certify”, and meant the certificate part of its undertaking: see per Warrington L.J., in *Union Nationale Syndicate’s Application* [1922] 2 Ch. 653, at 692, cited DISTINCTIVE.

UNDERTAKING

"Arrangements for the making of a film are undertaken" (Cinematograph Films Act 1948 (c.23) Sch.I paras 25, 44(1), Films Act 1960 (c.57) s.50(1)) by persons who are financially and generally responsible for its making: see *Re F. G. (Films)* [1953] 1 W.L.R. 483.

"Undertaking" (Children Act 1958 (c.65) s.2(1)) meant "in fact provided" (*Surrey CC v Battersby* [1965] 2 Q.B. 194).

"Undertaking" building operations (Construction (Lifting Operations) Regulations 1961 (SI 1961/1581) reg.3). A plant-hire company which hired out a crane and driver to a construction company for use in building operations was held to be an "employer of workmen who is undertaking" building operations or works for the purposes of this regulation (*Williams v West Wales Plant Hire Co* [1984] 1 W.L.R. 1311).

UNDERTAKING. In Lands Clauses Consolidation Act 1845 (c.18), "undertaking" means an undertaking of a public nature; and does not include such an undertaking as the Westminster Palace Hotel (*Wale v Westminster Palace Hotel Co*, 8 C.B.N.S. 276), or Sion College (*Re Sion College, Ex p. London Corp*, 31 S.J. 378). See PUBLIC UNDERTAKING.

"Undertaking" (London Street Tramways Act 1870 (c. clxxi)): see *North Metropolitan Tramways Co v London CC*, 72 L.T. 586, affirmed 60 J.P. 23.

Lands, etc. "suitable to and used of the purposes of their undertaking": see *Re Manchester Carriage Co and Ashton-under-Lyne*, 68 J.P. 576, and *Manchester Carriage Co v Swinton*, 68 J.P. 440, both cited USED.

"The undertaking has not been completed within the time limited" (Parliamentary Deposits and Bonds Act 1892 (c.27) s.1(1)) meant completed by the company authorised by the special Act: see *Re Peckham, etc. Tramways Bill* [1910] 2 Ch. 1.

"Undertaking", in a charge contained in a mortgage debenture given by a company, would generally be held to cover all its present and future acquired property (*Re Panama Co*, 5 Ch. 318; *Re Florence Land Co*, 10 Ch. D. 530; *Re Mersey Wood Co*, 1 T.L.R. 566; but see *Re New Clydach Iron Co*, L.R. 6 Eq. 514; see hereon Buckl. (7th edn), 185, 186; 1 Palmer Co Prec. (7th edn), 772); but not its "uncalled capital" (*King v Marshall*, 34 L.J. Ch. 163; *Re Marine Mansions Co*, L.R. 4 Eq. 601; see further *Re West Lancashire Railway*, 63 L.T. 56). Yet, even as regards uncalled capital, when a company has power to sell its "undertaking" there is nothing to prevent the directors from calling up the outstanding capital and selling the proceeds (*New Zealand Gold Co v Peacock* [1894] 1 Q.B. 622). And though it be incorrect to speak of a solvent company's property as ASSETS, yet if that word be used in a company's mortgage debenture or charge it would include uncalled capital (Companies Act 1862 (c.89) s.38; *Morris' Case*, 7 Ch. 200, 204; 8 Ch. 800; *Webb v Whiffin*, L.R. 5 H.L. 711, 724, 735; *Re Pyle Works*, 44 Ch. D. 534; *Re Pyle Works No.2* [1891] 1 Ch. 173; *Page v International Agency*, 62 L.J. Ch. 610). See Companies Act 1948 (c.38) s.212. An effective charge on uncalled capital cannot be made if the call is prevented from being made by a resolution under s.5 of the Companies Act 1879 (c.76) (*Re Mayfair Property Co* [1898] 2 Ch. 28). See Companies Act 1948 (c.38) s.64. See FLOATING SECURITY.

"Undertaking" as regards a railways debenture: see *Doe d. Myatt v St. Helen's Railway*, 2 Q.B. 364; *Gardener v London, Chatham & Dover Railway*, 2 Ch. 201; on which case see 1 Jarm. (4th edn), 224, 225, and especially as to the meaning and application of the leading case of *Gardner v London, Chatham & Dover Railway*, see *Redfield v Wickham*, 13 App. Cas. 474; *Central Ontario Railway v Trusts &*

Guarantee Co [1905] A.C. 576; *Re David*, 43 Ch. D. 27; *Re Yerbury*, 62 L.T. 55; *Re Parker* [1891] 1 Ch. 682; *Re Portsmouth Tramways Co* [1892] 2 Ch. 366; *Re Crossley* [1897] 1 Ch. 934. See also *Legg v Mathieson*, 29 L.J. Ch. 385; *Furness v Caterham Railway*, 7 W.R. 660; *Blaker v Herts & Essex Waterworks Co*, 41 Ch. D. 399, on which last case see *Re Barton-upon-Humber Water Co*, 42 Ch. D. 585.

An I.O.U. might have been (*R. v Chambers*, L.R. 1 C.C.R. 341), and a guarantee by way of suretyship (*R. v Reed*, 2 Moody, 62; *R. v Stone*, 2 C. & K. 364) or against negligence and dishonesty (*R. v Joyce*, 34 L.J.M.C. 168) was, an "undertaking for the payment of money" within s.23 of the Forgery Act 1861 (c.98).

"Undertaking" (Finance Act 1927 (c.10) s.55(1)(c)(i)) denoted the business or enterprise undertaken by a company (*Baytrust Holdings v IRC* [1971] 1 W.L.R. 1333).

"Undertaking of liability under policies of insurance", in s.1 of the Assurance Companies Act 1909 (c.49), included re-insurance business: see *Att-Gen v Forsikringsaktieselskabet National of Copenhagen* [1925] A.C. 639.

A trustee savings bank is an "undertaking" within art.1 of the Industrial Disputes Order 1951 (No.1376) (*R. v Industrial Disputes Order Ex p. East Anglian Trustee Savings Bank* [1954] 1 W.L.R. 1093; [1954] 2 All E.R. 730). So also is a brewery (*R. v Industrial Disputes Tribunal, Ex p. Courage* [1956] 1 W.L.R. 1062).

"Undertaking" (Industrial Relations Act 1971 (c.72) ss.27(1)(a), 167(1)(b)). A person working alone for an employer who employed others on different work elsewhere was nevertheless working for an "undertaking in which" more than "four employees... had been... employed" within the meaning of s.27(1)(a) (*Kapur v Shields* [1976] I.C.R. 26).

"Undertaking" (EEC Council Regulation No.543/69 art.14(8)). In cases where a sub-contractor hires out a driver to a transport undertaking it is the latter which is the "undertaking", within the meaning of this article, required to keep and store certain driving records (*Auditeur du Travail v Dufour* [1978] R.T.R. 186).

A public official was an "undertaking" within the meaning of the Treaty of Rome 1957, art.86 and subject to competition rules where he was engaged in an economic activity (*Miller & Bryce Ltd v Keeper of the Registers of Scotland* (1997) S.L.T. 1000).

In the context of European Community law the concept of an undertaking covers "any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed, and any activity consisting in offering goods and services on a given market is an economic activity". Customs agents were therefore undertakings within the meaning of art.85 EC (they offer, for payment, services consisting in the carrying out of customs formalities and other complementary services) (*Consiglio Nazionale degli Spedizionieri Doganali (CNSD) v EC Commission* [2000] 5 C.M.L.R. 614, ECJ, CFI).

Medical aid organisations responsible for running public ambulance services to which are reserved emergency transport services constitute "undertakings" subject to Community competition law and enjoy a special or exclusive right owing to the protection granted to them for transporting patients in both emergency and non emergency cases, which is likely to affect the capacity of other undertakings to carry out that economic activity. It is for the national court to determine whether there is an abuse of a dominant position affecting a substantial part of the common market (*Ambulanz Glockner v Landkreis Sudwestpfalz* [2001] E.C.R. I-8089, ECJ).

A municipality is not an undertaking for the purposes of art.53 of the European Economic Area Agreement (competition) while acting in its capacity as a public

UNDERTAKING

authority, but it is an undertaking when it engages in economic activity such as offering goods and services for payment (*Bodson v SA Pompes Funebres des Regions Liberees* [2002] 5 C.M.L.R. 5, EFTA Court).

In the competition law of the European community the concept of an undertaking includes any entity engaged in economic activity, regardless of legal status and method of being financed. An organisation which purchases goods, even in large quantity, to use them in the context of a social or other non-commercial activity does not act as an undertaking simply by virtue of being a purchaser in a market. The management of a national health service did not amount to an undertaking (*Federacion Nacional de Empresas de Instrumentacion Cientifica, Medica, Tecnica y Dental (Fenin) v Commission of the European Communities* [2003] 5 C.M.L.R. 1, ECJ, CFI).

"A medical practitioner specialising in dentistry... must be considered to be an undertaking... since he provides, in his capacity as a self-employed economic operator, services on a market, namely the market in specialist medical services in dentistry." (*Heiser v Finanzamt Innsbruck* (Case C-172/03) [2005] 2 C.M.L.R. 18 at [26].)

"Undertaking' is more normally used in the context of a business, but it is common ground, and in any event clear, that the [Health and Safety at Work etc Act 1974] applies equally to local authorities as well as to employers carrying on a commercial business." (*R. (Hampstead Heath WSC) v Corporation of London* [2005] EWHC 713 at [48] (Admin).)

An undertaking does not require to be an economic unit with legal personality (*Dansk Rorindustri A/S v EC Commission* (Case C-189/02)).

"Conduct his undertaking": see CONDUCT.

Stat. Def., Companies Act 1989 (c.40) s.22.

See TRANSFER.

"Undertaking any business": see UNDERTAKE.

Stat. Def., National Health Service Act 1977 (c.49) s.57; Industrial Development Act 1982 (c.52) s.17; Finance Act 1983 (c.28) s.44(3); Co-operative Development Agency and Industrial Development Act 1984 (c.57) Sch.1 para.2 (7).

"Undertaking... the tenor or effect of which is to restrict him as to his conduct or activities": see IN RESPECT OF.

"[I]n Community competition law the definition of an undertaking covers any entity engaged in an economic activity, regardless of the legal status of that entity and the way in which it is financed" (*Fenin v Commission* (Case C-205/03 P) [2006] 5 C.M.L.R. 7 at [25]).

"It is also settled case law that in competition law the term 'undertaking' must be understood as designating an economic unit for the purpose of the subject matter of the agreement in question, even if in law that unit consists of several persons, natural or legal." (*Daimler Chrysler AG v Commission of the European Communities* (Case T-325/01) CFI at [85].)

In the field of competition law, "undertaking" covers any entity which engages in economic activity, regardless of its legal status or the way in which it is financed (*Ministero Dell'Economia E Delle Finanze v Cassa Di Risparmio di Firenze Spa* (Case C-222/04) ECJ).

"[T]he Court has consistently held that any entity engaged in an economic activity, irrespective of its legal form and the way in which it is financed, must be categorised as an undertaking.... It should be borne in mind in this regard that any activity

consisting in offering goods or services on a given market is an economic activity.” (*Motosykletistiki v Elliniko Dimosio* (Case C-49/07) [2008] 5 C.M.L.R. 11 ECJ at [21] & [22].)

“According to consistent case law, in the context of competition law, the concept of an undertaking covers any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed.” (*Kattner* [2009] 2 C.M.L.R. 51 ECJ.) Stat. Def., Companies Act 2006 s.1161.

See LOCAL WORKS; UNDERTAKER.

UNDERTENANT. See LEASE; TENANT; UNDERLEASE; *Lewis v Baker* [1905] 1 Ch. 46, cited UNDERLEASE.

Grant of right of way to lessee, “his executors, administrators, and assigns, undertenants and servants”: see *Baxendale v North Lambeth Liberal Club* [1902] 2 Ch. 429, cited WAY; cp. *Keith v Twentieth Century Club*, 73 L.J. Ch. 549, cited FRIEND.

UNDERVALUE. The sale of a reversion could not “be opened or set aside merely on the ground of undervalue” (Sale of Reversions Act 1867 (c.4) s.1); there had to be “fraud or unfair dealing” (s.1). But “it is obvious that the words ‘merely on the ground of undervalue’ do not include the case of an undervalue so gross as to amount of itself to evidence of fraud; and in *Aylesford v Morris*, (8 Ch. 490), Lord Selborne said that this Act ‘leaves undervalue still a material element in cases in which it is not the sole equitable ground for relief’” (per Kay J., *Fry v Lane*, 40 Ch. D. 312, cited FRAUD). See further *O’Connor v Foley* [1905] 1 Ir. R. 1. See Law of Property Act 1925 (c.20) s.174.

Undervalue in a sale by a mortgagee must be so gross as to amount to evidence of fraud to justify setting aside the sale (*Davey v Durrant*, 26 L.J. Ch. 830; *Warner v Jacob*, 20 Ch. D. 220).

UNDERWOOD. Generally speaking the term “underwood” is applied to a species of wood which grows expeditiously and sends up many shoots from one stool, the root remaining perfect from which the shoots are cut, and producing new shoots, and so yielding a succession of profits (per Bayley J., *R. v Ferrybridge*, 1 B. & C. 384; see further, *Note*, 379–383, *ibid.*). See SALEABLE UNDERWOOD.

“Underwood is in the nature of a crop. It may be cut by the tenant at the periodical times which usage or the custom of the country has established, but not before or after those times (*Humphreys v Harrison* 1 Jac. & W. 581; *Brydges v Stephens* 6 Mad. 279)”; Redman (5th edn), 244.

“Cut as underwood”: see *Dashwood v Magniac* [1891] 3 Ch. 306, cited TIMBER.

As to what words in a lease amount to an exception of underwoods, see *Kenson v Reading*, Cro. Eliz. 244, cited EXCEPTION.

See COPPICE; TREES; WOOD.

UNDERWRITE. See POLICY.

To “underwrite” shares does not mean to “place” them (see TO PLACE), but means “agreeing to take so many shares as are specified in the underwriting contract, if the public do not subscribe for them” (per Lindley L.H., *Re Licensed Victuallers’ Association*, 42 Ch. D. 1), or, in other words, “to take an allotment of such part of the shares as should not be applied for by the public” (per Stirling J., *Re London-Paris Financial Corp*, 13 T.L.R. 331), or, “to ‘underwrite’ shares, involves an obligation take ‘at par’ so many as others do not take” (per Lindley L.J., *ibid.*, 13 T.L.R. 570 at 571). See hereon *Re Harvey’s Oyster Co* [1894] 2 Ch. 474.

UNDERWRITER

A company may (upon offering shares to the public) pay commission for underwriting its shares if so authorised by its articles and disclosed in the prospectus, and the amount or rate of commission authorised is not exceeded (Companies Act 1900 (c.48) s.8, now Companies Act 1985 (c.6) ss.97, 98). See hereon *Metropolitan Coal Consumers Association v Scrimgeour* [1895] 2 Q.B. 604, and cases there distinguished; *Hilder v Dexter* [1902] A.C. 474.

See DISCOUNT; ON ALLOTMENT; SUBSCRIBE. See further APPLY; COMMISSION; OFFER.

UNDERWRITER. See UNDERWRITE; POLICY. See further LLOYDS; also Assurance Companies Act 1909 (c.49) s.29.

Stat. Def., Insurance Companies Act 1974 (c.49) s.85; Insurance Companies Act 1982 (c.50) s.96.

UNDISPOSED OF. "Sum remaining undisposed of": see *M'Cabe v Galsworthy* [1874] W.N. 161.

Property undisposed of by will (Administration of Estates Act 1925 (c.23) s.34, Sch.I Pt II) includes property disposed of, but not effectually disposed of by will (*Re Harland-Peck* [1941] Ch. 182, 187–8).

See LEFT.

UNDISTRIBUTED. Assets of a company appropriated to the maintenance and development of the company's property and the gradual paying off of its debentures under a scheme sanctioned under the Joint Stock Companies Arrangement Act 1870 (c.104), were not "undistributed assets" within s.15(3) of the Companies Winding-up Act 1890 (c.63) (see Winding-up Rules 1949 (SI 1949/330) r.199). (*Re Land Mortgage Bank of Florida* [1898] 1 Ch. 444.)

Cp. "surplus assets", under SURPLUS.

UNDIVIDED SHARES. Partnership land is held in "undivided shares" for the purposes of the Law of Property Act 1925 (c.20) Sch.1 Pt IV (*Re Fuller's Contract* [1933] Ch. 652).

"Undivided shares vested in possession": see *Re Stamford and Warrington* [1927] 2 Ch. 217.

"Undivided share" (Settled Land Act 1882 (45 & 46 Vict., c.38) s.2(10)(i)): see LAND.

UNDUE. "It seems to me that this conclusion flows from the fact that both section 1 of the Charging Orders Act 1979 and the terms of CPR 73.8 recognise the existence of a discretion as to whether to make an order final. However, I do not consider that the discretion is a general one at large. Rather, subsection (5) talks about any other creditor being 'unduly prejudiced' by the making of the charging order. I agree with Mr Twigger that Mr Lord is wrong in suggesting that this provision is only intended to inure to the benefit of the general body of creditors, since it refers in terms to 'any other creditor' as opposed to 'all other creditors'. However, the expression 'unduly prejudiced' seems to me to recognise that a charging order in favour of one creditor will almost certainly, in one sense, prejudice other creditors, because it gives that creditor security against which to enforce his judgment which the other creditors do not have, but it is only where that prejudice is 'undue' that the court should consider not making a final charging order. In my judgment, the prejudice to other creditors, such as the opposing banks in the present case, can only be said to be 'undue' if there is something about the judgment creditor's conduct which would cause undue prejudice if there were a final charging order or if there are some other exceptional

circumstances, which mean that other creditors will suffer some prejudice over and above the prejudice they would inevitably suffer, if an order were made in favour of the judgment creditor. There is no authority directly on the point as to when, in non-statutory insolvency regime cases, the prejudice to other creditors will be “undue” or as to what constitutes an exceptional situation, so that it would be appropriate for the court to exercise its discretion not to make a charging order final. However, I accept that (although the House of Lords in *Roberts* disapproved the ratio of *Burston* and therefore care must be taken in placing too much reliance on the judgments) the judgments of Megaw LJ and Shaw LJ in that case do provide some guidance as to when it would be appropriate not to make a charging order final because of exceptional circumstances, such as aspects of the judgment creditor’s conduct. Nonetheless, in my judgment, it is of some significance that all the examples the two Lords Justice give are ones of what might be described as ‘sharp conduct’ by the judgment creditor: putting other creditors off the scent by purporting to agree to forego immediate pursuit of a claim or undue haste in obtaining a preferred position or unfair use of special knowledge.” (*British Arab Commercial Bank Plc v Alghosaibi* [2011] EWHC 2444 (Comm).)

UNDUE DELAY. Failure to act “promptly” in applying for judicial review is still “undue delay” within the meaning of s.31(6) of the Supreme Court Act 1981 (c.54), notwithstanding that there was “good reason” for extending the time under R.S.C. Ord.53 r.4(1) (*R. v Stratford-on-Avon DC, Ex p. Jackson* [1985] 1 W.L.R. 1319). Whenever there was a failure to act promptly, or within three months as prescribed by Ord.53 r.4(1), there was “undue delay” within the meaning of s.31(6) of the 1981 Act (*R. v Dairy Produce Quota Tribunal, Ex p. Caswell* [1990] 2 W.L.R. 1320). But where, on an inter partes hearing, there was a finding that an application had been made promptly for the purposes of Ord.53 r.4 it did not rule out the possibility of a court finding at the substantive hearing that there had been “undue delay” in making the application and exercising its discretion under s.31(6)(b) to refuse to grant any relief (*R. v Swale BC, Ex p. Royal Society for the Protection of Birds* [1990] C.O.D. 263).

An applicant who failed to apply promptly for judicial review was guilty of “undue delay” even if he had good reason for the delay (*R. v Secretary of State for Health, Ex p. Furneaux* [1994] 2 All E.R. 652).

UNDUE DISCRIMINATION. A concept that was of importance under the Electricity Act 1947, and which has resurfaced principally in the context of European Community law and domestic law implementing European obligations.

“Freedom from undue discrimination is a fundamental freedom guaranteed by the EC treaty. The court must interpret qualifications to this fundamental freedom narrowly.” (*R. (on the application of Mabanaft Ltd) v Secretary of State for Trade and Industry* [2009] EWCA Civ 224 at para.19.)

For the meaning of the term in the context of s.319 of the Communications Act 2003 (Ofcom’s standards code), see *R. (on the application of Animal Defenders International) v Secretary of State for Culture, Media and Sport* [2006] EWHC 3069 (Admin). For discussion of the term in its 1947 and related contexts, see also *Woolwich Equitable Building Society v Inland Revenue Commissioners* [1993] A.C. 70 HL; *South West Water Authority v Rumble’s* [1985] A.C. 609 HL; *South of Scotland Electricity Board v Elder* [1978] S.C. 132; *London Electricity Board v Springate* [1969] 1 W.L.R. 524 CA (“It has been said that it is impossible that it is beyond the wit of man (as was said by Simonds J. in *Attorney-General v Wimbledon Corporation*

[1940] Ch. 180 , 194) to produce a system which will provide individually for every consumer and that therefore the matter must be dealt with on broad grounds. As Scrutton L.J. pointed out, a certain section of consumers may be treated differently from other consumers. It seems to me that that applies in the present case, and that while there may be discrimination there is not undue discrimination . . . ”); and *British Oxygen Co Ltd v South of Scotland Electricity Board (No.2)* [1959] 1 W.L.R. 587 HL.

Note that Ofcom has consulted on the meaning and application of the concept of undue discrimination; see in particular Consultation Papers of June 30, 2005 and November 15, 2005.

UNDUE DETENTION. “Undue detention”, giving excusal or rights under a bill of lading, does not extend to a detention caused by the shipowner, or his agents or servants (*Searle v Lund*, 88 L.T. 863). See further DETENTION.

UNDUE EXPENSE. “Undue expense and risk” (Motor Vehicles (Authorisation of Special Types) General Order 1955 (No.1038) art.13). The only expense and risk that can be considered is that of dividing the load. The added expense or risk of carrying the load when divided is irrelevant for the purposes of this article (*Gunter Brothers v Arlidge* [1962] 1 W.L.R. 199).

UNDUE HARDSHIP. (Arbitration Act 1950 (c.27) s.27). “Hardship” is caused when a justiciable claim which may succeed is barred by a time-limit. “Undue hardship” is caused when that hardship is not warranted by the circumstances (*Tote Bookmakers v Development and Property Holding Co* [1985] Ch. 261).

“Undue hardship” (Foreign Limitation Periods Act 1984 (c.16) s.2(2)). The word “undue” adds something more than just hardship. It means an excessive hardship or a hardship greater than the circumstances warrant (*Jones v Trollope Colls Cementation Overseas*, *The Times*, January 26, 1990). Where a contract is governed by foreign law which does not permit an extension of time to sue, but the parties agree an extension that would have been in accordance with the Hague-Visby rules, it could cause “undue hardship” under this section if the extension were unenforceable (*The Kominos S* [1990] 1 Lloyd’s Rep. 541).

UNDUE INFLUENCE. Influence to be “undue”, so as to vitiate a gift is of two classes according as the gift is (a) inter vivos; (b) testamentary.

Gifts inter vivos—

(a) In gifts inter vivos a presumption against the gift arises in cases where subsists either of the following relationships: parent and child; doctor and patient; confessor and penitent; trustee and cestui que trust; or guardian and ward; but not brother and brother (*Glover v Glover* [1951] 1 D.L.R. 675). Gifts inter vivos brought about by the influence of the superior in any such case will be void, unless the donee proves that the donor was placed “in such a position as would enable him to form an entirely free and unfettered judgment independent altogether of any sort of control” (*Archer v Hudson*, 13 L.J. Ch. 380; *Rhodes v Bate*, 1 Ch. 252; *Parfitt v Lawless*, L.R. 2 P. & D. 462). See hereon the leading case, *Huguenin v Baseley*, 1 White & Tudor, 247; see further *Allcard v Skinner*, 36 Ch. D. 145, the observations of Bowen L.J., in which last case were applied in *Powell v Powell* [1900] 1 Ch. 243; *Morley v Loughnan* [1893] 1 Ch. 736.

(b) As regards parent and child, see *Re Coomber* [1911] 1 Ch. 174; *London & Westminster Loan Co v Bilton*, 55 S.J. 198; see also *Inche Noriah v Shaik Allie Bin Omar* [1929] A.C. 127.

(c) The presumption of undue influence by a mother over her daughter is not necessarily rebutted by the fact of the daughter having married and left home (*Lancashire Loans Ltd v Black* [1934] 1 K.B. 380).

(d) The presumption of undue influence extends to gifts by a woman to a man she is engaged to marry (*Re Lloyds Bank Ltd, Bomze and Lederman v Bomze* [1931] 1 Ch. 289).

(e) But the presumption does not arise where the relationship is husband and wife (*Grigby v Cox*, 1 Ves. sen. 517; *Nedby v Nedby*, 21 L.J. Ch. 446; *Barron v Willis* [1899] 2 Ch. 578, which case was reversed on another point, [1900] 2 Ch. 121; in House of Lords nom. *Willis v Barron* [1902] A.C. 271; see also *Howes v Bishop* [1909] 2 K.B. 390, explaining *Chaplin v Brammall* [1908] 1 K.B. 233; per Farwell L.J., *Talbot v Von Boris*, 80 L.J.K.B. 666); though gifts by wife to husband may sometimes be regarded with jealousy (*Nedby v Nedby*, above). See also *Turnbull v Duval* [1902] A.C. 429; *Bischoff's Trustee v Frank*, 89 L.T. 188; and where the wife is surrendering important property or rights at the request of her husband, she ought to have independent advice, and if she act without such advice the transaction will probably be set aside: see *Willis v Barron*, above; *Bank of Montreal v Stuart* [1911] A.C. 120. Cp. IMPORTUNITY; DON.

(f) "Gifts *inter vivos* by a client to a solicitor are always void" (per Kindersley V.C., *Tomson v Judge*, 24 L.J. Ch. 787, which case see for review of the previous authorities commencing with the leading case of *Welles v Middleton*, 1 Cox Ch. 112); and nothing but a prior severance of the confidential relation will save such gifts (*Morgan v Minett*, 6 Ch. D. 638); the rule is the same if the gift be to the wife of the solicitor (*Goddard v Carlisle*, 9 Price, 169; *Liles v Terry* [1895] 2 Q.B. 679). See further *Barron v Willis*, above. The rule as to "purchases" by a solicitor from his client is not so strict: see *Tomson v Judge*, above. *Tomson v Judge* was applied in *Wright v Carter* [1903] 1 Ch. 57. See further *Haslam & Evans* [1902] 1 Ch. 765, and cases there cited.

(g) So there is no rule of law, "which says that a trustee shall not buy trust property from a *cestui que trust* (see CESTUI); but it is a well-known doctrine of equity that, if a transaction of that kind is challenged in proper time, a court of equity will examine into it, will ascertain the value that was paid by the trustee, and will throw upon the trustee the onus of proving that he gave full value, and that all information was laid before the *cestui que trust* when it was sold" (per Cairns C., *Thomson v Eastwood*, 2 App. Cas. 236, applied in *Dougan v Macpherson*, 4 Fraser [1902] A.C. 197).

(h) A guarantee given by A acting on behalf of a company consisting of himself and brother B and his father C, and obtained under an implied threat to prosecute B for an illegal forgery, the recipient of the guarantee knowing that A only gave the guarantee because he thought that the shock of B's prosecution would endanger the life of C, held obtained by undue influence and voidable. A contract so obtained remains voidable so long as the undue influence persists (*Mutual Finance Ltd v John Wetton & Sons Ltd* [1937] 2 K.B. 389).

(j) Undue influence is not confined to cases in which the influence is exerted to secure a benefit for the person exerting it, but extends also to cases in which a person of imperfect judgment is placed under the direction of one possessing greater experience or such force as that inherent in such a relation as that of father and child (*Bullock v Lloyd's Bank* [1955] Ch. 317).

(k) A trustee who carries out a transaction in breach of trust with the beneficiary's apparent consent may still be liable if he knew or ought to have known that the

beneficiary was acting under the undue influence of another, notwithstanding that the trustee received no benefit from the breach of trust (*Re Pauling's Settlement Trusts, Younghusband v Coutts & Co* [1964] Ch. 303).

(l) See also *Re Craig, Meneces v Middleton* [1971] Ch. 95.

Testamentary gifts:

(a) But the law regarding testamentary gifts is very different. "The natural influence of the parent or guardian over the child, the husband over the wife, or the attorney over the client, may lawfully be exerted to obtain a will or legacy, so long as the testator thoroughly understands what he is doing and is a free agent. There is nothing illegal in the parent or husband pressing his claims on a child or wife, and obtaining a recognition of those claims in a legacy, provided that that persuasion stop short of coercion, and that the volition of the testator, though biased and impressed by the relation in which he stands to the legatee, is not overborne and subjected to the domination of another. 'The influence which will set aside a will', says Mr Justice Williams (*Wms. Exs.* (12th edn) 32), 'must amount to force and coercion, destroying free agency; it must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act; further there must be proof that the act was obtained by this coercion, by importunity which could not be resisted, that it was done merely for the sake of peace, so that the motive was tantamount to force and fear'" (per Penzance J.O., *Parfitt v Lawless*, L.R. 2 P. & D. 462).

(b) "In order to have something to guide us in our inquiries on this very difficult subject, I am prepared to say that influence in order to be 'undue' within the meaning of any rule of law which would make it sufficient to vitiate a will, must be an influence exercised either by coercion or by fraud. In the interpretation, indeed, of these words some latitude must be allowed. In order to come to the conclusion that a will has been obtained by coercion, it is not necessary to establish that actual violence has been used or even threatened. The conduct of a person in vigorous health towards one feeble in body, even though not unsound in mind, may be such as to excite terror and make him execute as his will an instrument which, if he had been free from such influence, he would have not executed. Imaginary terrors may have been created, sufficient to deprive him of free agency. A will thus made may possibly be described as obtained by coercion. So, as to fraud. If a wife, by falsehood, raises prejudices in the mind of her husband against those who would be the natural objects of his bounty, and by contrivance keeps him from intercourse with his relatives, to the end that these impressions which she knows he had thus formed to their disadvantage may never be removed—such contrivance may, perhaps, be equivalent to positive fraud and may render invalid any will executed under false impressions thus kept alive. It is, however, extremely difficult to state in the abstract what acts will constitute undue influence in questions of this nature. It is sufficient to say that, allowing a fair latitude of construction, they must range themselves under one or other of these heads, coercion or fraud" (per Cranworth C., *Boyse v Rossborough*, 6 H.L. Cas. 48, 49).

(c) So, in directing the jury in *Wingrove v Wingrove*, 11 P.D. 82, Hannen P. said:

"All men are familiar with the word 'influence'. They speak of one person having 'unbounded influence' over another, and they speak of good influences and evil influences; but there may be what is commonly called 'unbounded influence', or there may be good influence or evil influence, and yet such influence may not be 'undue' in the legal sense of the word. There may be the immoral influence of a person of one sex

over a person of the other sex which would result in the person subject to such influence yielding to it in a manner which would be very deplorable as regards testamentary disposition; or there may be the case of a person who in the relationship of companion to another of the same sex indulges the inclination of his or her friend for evil courses, and by that means obtains a pernicious influence over him in respect of the disposition of property; and yet it may be that in neither of these cases is there anything which the law would regard as 'undue' influence. To render influence legally 'undue' there must be coercion. A testator or testatrix may have been induced to make a will of which every disinterested person would disapprove, and yet that will may be in law a perfectly valid one. To establish undue influence, it must be shown that the testator or testatrix has been coerced to do an act which he or she did not desire to do. Of course this coercion may be of different kinds. To take an extreme case, there may be coercion with actual violence; or it may exist without anything of that sort. From advanced age, or from some other cause, a person may be so weakened that, upon a thing being pressed upon him, he becomes so fatigued in brain as to consent to do it, though it is an act with which his brain does not go. Influence which brings about the execution of a will by a person in such a condition will be 'undue influence', because it will amount to coercion; but the fact of a person making a will being influenced in so doing by mistaken, or even immoral, considerations on his own part or on that of the person influencing him, would not be enough to invalidate a will. The state of things which is sufficient to establish undue influence must show that the will was not the expression of the will of the testator, but something which he has been made to represent as his will; and therefore, if it is shown that the testator's own wishes are expressed in his will, the fact that the will is not such as would meet with approbation, or the fact that rightminded persons must condemn the conduct of the person influencing the testator to execute it, will not be enough to establish undue influence.

"There is another general proposition which I think is desirable to bring under your notice—namely, that in cases of undue influence it is not enough to show that the person charged with having exercised such influence had power over the mind of the testator, but it is necessary to prove that such power was exercised in the particular case, and that the testator was thereby induced to make the will".

(d) See further *Baudains v Richardson* [1906] A.C. 169, in which case the PC applied *Boyse v Rossborough* (1856) 6 H.L.C. 2, and also the above direction of Hannen P. in *Wingrove v Wingrove*; *Craig v Lamoureux* [1919] W.N. 285.

"Undue influence" (Representation of the People Act 1949 (c.68) s.101(1)). If by some fraudulent scheme an elector is prevented from receiving the literature of one candidate his freedom of choice may be impeded and "undue influence" would have been exercised (*Roberts v Hogg* (1971) S.L.T. 78).

English law grants relief where unfair contracts are entered into as a result of undue influence being used by one party against the other. The expression "undue influence" need not connote any wrongdoing on the part of the party benefiting from a transaction, but may be found to have been exerted once a special relationship has been found to exist, unless it is positively established that the duty of fiduciary care has been entirely fulfilled (*Lloyds Bank v Bundy* [1975] Q.B. 326, applying *Allcard v Skinner* (1887) 36 Ch.D. 145, and *Tufton v Sperni* [1952] W.N. 439). For other special relationship cases where agreements have been set aside on the grounds of inequality of bargaining power resulting in undue influence, see *Schroeder (A.) Music Publishing*

Co v Macaulay [1974] 1 W.L.R. 1308, and *Davis (C.) Management v WEA Records* [1975] 1 W.L.R. 61. See also *Turner v Barclays Bank* [1994] 1 W.L.R. 129.

Cp. FRAUD; HARSH; UNCONSCIONABLE BARGAIN; UNDERVALUE.

UNDUE MEANS. "An award is procured by 'undue means' (s.2, Arbitration Act 1967 (c.15)) if it is arrived at by a departure from natural justice in ascertaining the facts, as Wilson J., suggests in *Morgan v Mather*, 2 Ves. 18" (per Denman C.J., *Re Plews and Middleton*, 6 Q.B. 852), e.g. as held in this last case, if the arbitrators carry on examinations separately instead of jointly.

UNDUE PREFERENCE. "Undue preference" (Bankruptcy Act 1890 (c.71) s.8.(3)(i); see Bankruptcy Act 1914 (c.59) s.26(3)(i)) includes every fraudulent preference, and "a good deal more" (per Lindley L.J., *Re Skegg*, 25 Q.B.D. 505); if a bankrupt "interferes in any way in order to give an advantage to one creditor over the others, he is guilty of giving an undue preference", within the section (per Esher M.R., *Re Skegg*; see further *Re Bryant* [1895] 1 Q.B. 420). See A; MOTIVE; VIEW.

"Undue or fraudulent preference" (s.164 of the Companies Act 1862 (c.89); cp. Companies Act 1985 (c.6) s.615) has no larger operation than the fraudulent preference of s.48 of the Bankruptcy Act 1883 (c.52) (*Re Stenotyper Ltd* [1901] 1 Ch. 250, cited FRAUDULENT PREFERENCE); see further *Re Gwawr-y-Gweithyr Industrial Society* [1901] 2 K.B. 482, cited SET-OFF. See s.44 of the Bankruptcy Act 1914 (c.59); *Re Drage*, 134 L.T. 765.

"Undue or unreasonable preference or advantage" "undue or unreasonable prejudice or disadvantage" (Railway and Canal Traffic Act 1854 (c.31) s.2). These words "must, it appears to me, be a preference or prejudice with reference to competing parties—an inequality, an unfairness with reference to others, or a prejudice to other works—and cannot apply to the suggestion that, because there are excessive charges, a prejudice arises" (per Huddleston B., *R. v Railway Commissioners*, 58 L.J.Q.B. 239, 240); see also s.55 of the Railway and Canal Traffic Act 1888 (c.25).

The "undue preference" (as regards the terms of supply of electrical energy) mentioned in s.20 of the Electric Lighting Act 1882 (c.56), semble, connoted that there should be no infraction of the rule in s.19, i.e. that each consumer "shall be entitled to a supply on the same terms on which any other company or person, in such part of the area, is entitled under similar circumstances to a corresponding supply", "is entitled" meant "entitled by arrangements" made with the supply company; the phrase "similar circumstances" gave a latitude in making bargains and was a question of degree, e.g. if one customer took largely a day load (which was the more beneficial to the supply company), he might be given somewhat more favourable terms than one who drew on the night load; "corresponding supply" did not mean that the supply company were, necessarily, to treat a small consumer upon equally advantageous terms as a large consumer (per Buckley J., *Metropolitan Electric Supply Co v Ginder* [1901] 2 Ch. 799); see also *Att-Gen v Hackney Corp* [1918] 1 Ch. 372; see further *Long Eaton Urban Council v Att-Gen* [1915] 1 Ch. 124.

"Undue preference . . . undue discrimination" (Electricity Act 1947 (c.54) s.37(8)): preference or discrimination may be undue within the subsection not only because it is exercised for illegitimate reasons but also on the ground of excess (*South of Scotland Electricity Board v British Oxygen Co* [1956] 1 W.L.R. 1069). Cost to the producer is a relevant consideration in determining questions of "undue discrimination" and "undue preference" (*British Oxygen Co Ltd v South of Scotland Electricity Board* [1959] 1 W.L.R. 587). Discrimination may be "undue" even although not exercised for

illegitimate reasons (*British Oxygen*). Where, in order to cover the greater capital and maintenance costs incurred, an electricity board charges a higher standing charge to the occupier of larger than average premises, it is not “undue discrimination” within the section (*London Electricity Board v Springate* [1969] 1 W.L.R. 524).

UNDUE PRESSURE. As to what undue pressure will be insufficient to vitiate an arrangement between parties, see *Barnes v Richards*, 71 L.J.K.B. 341. See also **PRESSURE**; cp. **DURESS**.

A contract, though made and to be performed in a foreign country, will not be enforced in England if obtained by duress (*Kaufman v Gerson* [1904] 1 K.B. 591).

UNDULY. To do a thing “unduly” is to do something which, in the abstract, you may do yet which is done contrary to law or right; e.g. it is not so contrary, and an administrator does not “unduly prefer” his own debt within that phrase in his administration bond, if he exercises his right of retainer, even though, in the result, he thereby appropriates all the net assets, and leaves nothing for the other creditors (*Re Belham* [1901] 2 Ch. 52, approving *Davies v Parry* [1899] 1 Ch. 602, and applying *Nunn v Barlow*, 2 L.J. (O.S.) Ch. 123). See **RETAIN**.

By becoming a bankrupt on his own petition, a building contractor “unduly delays proper payment” to the persons supplying him with materials for the contract, within a clause in the contract enabling the employer to pay such persons himself (*Re Wilkinson* [1905] 2 K.B. 713).

“Unduly burdensome” (Caravan Sites and Control of Development Act 1960 (c.62) s.7(1)) means burdensome in a respect unnecessary or unreasonable in the particular circumstances (*Llanfyllin RDC v Holland* (1964) 62 L.G.R. 459). The justices must decide for themselves whether the burden imposed by the condition in the licence was outweighed by the resulting public benefit (*Cooper (Owen) Estates v Lexden and Winstree RDC* (1965) 63 L.G.R. 66; *Esdell Caravan Parks v Hemel Hempstead RDC* [1966] 1 Q.B. 895).

Cp. **DULY**.

UNDULY HARSH. “I turn to the interpretation of the phrase ‘unduly harsh’.

Plainly it means the same in section 117C(5) as in Rule 399. ‘Unduly harsh’ is an ordinary English expression. As so often, its meaning is coloured by its context. . . . This steers the tribunals and the court towards a proportionate assessment of the criminal’s deportation in any given case. Accordingly the more pressing the public interest in his removal, the harder it will be to show that the effect on his child or partner will be unduly harsh. Any other approach in my judgment dislocates the ‘unduly harsh’ provisions from their context. It would mean that the question of undue hardship would be decided wholly without regard to the force of the public interest in deportation in the particular case. But in that case the term ‘unduly’ is mistaken for ‘excessive’ which imports a different idea. What is due or undue depends on all the circumstances, not merely the impact on the child or partner in the given case. In the present context relevant circumstances certainly include the criminal’s immigration and criminal history. The issue is not advanced with respect either by the terms of the Secretary of State’s guidance in the immigration directorate instructions or the learning on the use of the term ‘unduly harsh’ in the context of internal relocation issues arising in refugee law. The IDIs are not a source of law and the asylum context of internal relocation issues is far removed from that of Rules 398 to 399. In fact authority in the asylum field emphasises the importance of context (see *Januzi* [2006]

UNENCLOSED

2 AC 426 per Lord Bingham at paragraph 21).” (*MM (Uganda) v Secretary of State for the Home Department* [2016] EWCA Civ 450.)

UNENCLOSED GROUND. (Street Betting Act 1906 (c.43) s.1.) A cricket field which has well-maintained post-and-wire fences on all sides is not unenclosed ground to which the public, for the time being, have unrestricted access (*Foggo v Hill* (1932) S.C. (J.) 6).

UNENFORCEABLE. “Unenforceable” (Bretton Woods Fund Agreement Order 1946 (No.36) art.VIII s.2(b)) means that the relevant exchange contract cannot be enforced by the courts although the contract itself is not rendered illegal thereby (*United City Merchants (Investments) v Royal Bank of Canada* [1983] 1 A.C. 168).

UNEXPIRED. Lessee or assignee of “the unexpired residue, whatever it may be, of any term originally created for a period of not less than 60 years (whether determinable on a life or lives or not)” (Representation of the People Act 1867 (c.102) s.5): see *Trotter v Watson*, L.R. 4 C.P. 434.

“Unexpired term” in Sch.III of the Licensing (Consolidation) Act 1910 (c.24), held to be a “word of art” and to mean the residue unexpired of the actually existing term for which the lessee or other tenant held the premises, and not to include the term of a reversionary lease to commence on the day next but one after the end of the existing lease or tenancy: see *Llangattock v Watney & Co*, 79 L.J.K.B. 559. The date from which such unexpired term to be calculated held to be the day when the compensation was payable by the licence holder, i.e. 10 October: see *London CC v Watney & Co* [1909] 1 K.B. 637. Cp. *Horton v Penn* [1907] 1 K.B. 561.

See EXPIRATION.

UNFAIR. “Unfair competition”: see *Mogul Co v McGregor*, 23 Q.B.D. 598, and *Ajello v Worsley* [1898] 1 Ch. 274, both cited MALICE.

Rule 15(c) of the rules of a trade union provided against “unfair competition” with regard to the renting of sites on fair grounds. A party to a dispute over the allocation of a site occupied it and refused to pay a fine imposed by the union committee; his action was held not to be “unfair competition” (*Lee v Showmen’s Guild of Great Britain* [1952] 2 Q.B. 329).

Fraud or unfair dealing: see FRAUD; *Brenchley v Higgins*, 70 L.J. Ch. 788.

“Unfair” wear and tear is wear and tear not attributable to ordinary wear (*Boyer v Warbey* [1953] 1 All E.R. 269).

“Unfairly prejudiced” (Patents Act 1949 (c.87) s.34(2)(d)(iii)): the termination of an existing licence and the refusal to grant a new one is obviously prejudicial to the licensee; whether it is unfair must be decided with reference to all the circumstances of the case. Where the licence was terminable at twelve months’ notice, any development of the invention concerned must be held in the absence of evidence to the contrary, to be an ordinary business risk taken with full knowledge of the possible consequences, and, therefore, refusal to grant a new licence was not “unfair prejudice” (*Re Kamborian’s Patent* (1961) 15 R.P.C. 403).

An agreement requiring a borrower to pay interest after judgment at a contractual rate was not unfair within the meaning of reg.4(1) of the Unfair Terms in Consumer Contracts Regulations 1994. Unfairness was to be determined by reference to whether the term caused a significant imbalance in the parties’ rights and obligations under the contract, looking at the contract as a whole and considering the position of typical parties when it was made. (*Director General of Fair Trading v First National Bank Plc* [2002] 1 All E.R. 97, HL).

Stat. Def., Fair Trading Act 1973 (c.41) s.34(2)(3).

Distinguished from excessive: “252 The questions therefore to be determined are whether the difference between the costs actually incurred and the price actually charged is excessive, and, if the answer to this question is in the affirmative, whether a price has been imposed which is either unfair in itself or when compared to competing products.” (*United Brands v Commission* (Case C-27/76); see also *Scandlines Sverige AB v Port of Helsingborg* (COMP/A.36.568/D3) Commission of the European Communities [2006] 4 C.M.L.R. 23, paras 149–152.)

See FAIR AND REASONABLE; UNREASONABLY.

UNFAIRLY DISMISSED. “Not to be unfairly dismissed” (Employment Protection (Consolidation) Act 1978 (c.44) s.57). Where a person was dismissed for the valid reason of redundancy the fact that he had not been consulted beforehand did not automatically render his dismissal unfair (*Polkey v AE Dayton Services* [1987] 1 All E.R. 984). A six month delay between the conduct giving rise to dismissal and the actual dismissal does not necessarily make the dismissal “unfair” (*Dillett v National Coal Board* [1988] I.R.C. 218). An employer’s dismissal procedure is *prima facie* unfair if an employee is not allowed to know the contents of statements upon which the employer relies to justify dismissal (*Louies v Coventry Hood and Seating Co* [1990] I.C.R. 54). Where an employee was to be dismissed from particular employment for which he had become unsuitable it might be unfair for the purposes of this section for an employer to do so without first considering the possibility of alternative employment (*P. v Nottinghamshire CC* [1992] I.R.L.R. 362). It was not unfair to dismiss an employee who had admitted making nuisance telephone calls to other members of the staff (*East Berkshire Health Authority v Matadeen* [1992] I.R.L.R. 336). It was not unfair to dismiss the managing director of a company following the discovery by his fellow directors that he had been making plans to set up in competition (*Marshall v Industrial Systems & Control* [1992] I.R.L.R. 294). It was not unfair to dismiss four nurses who had refused to accept a variation in their terms of employment, in circumstances where the new terms offered, considering all the surrounding circumstances, were reasonable (*St. John of God (Care Services) v Brooks* [1992] I.R.L.R. 546). It was not unfair to dismiss an employee who had committed a deliberate fraud in circumstances where he had received a final warning for a similar fraud (*United Distillers v Conlin* [1992] I.R.L.R. 503). It was unfair to dismiss an employee where the initial disciplinary hearing was defective because it had been convened with undue haste, notwithstanding that the defects had been cured at the appeal stage (*Byrne v BOC* [1992] I.R.L.R. 505). It was not unfair to dismiss an employee who had indicated he would resign shortly to emigrate and then, after the employer had recruited and trained his successor, attempted to revoke his decision (*Ely v YKK Fasteners (UK)* [1994] I.C.R. 164). An employee made redundant with immediate effect and without consultation was “unfairly dismissed” within the meaning of s.57 notwithstanding the employers’ claim that there were exceptional circumstances which obviated the need to consult (*Heron v Citylink Nottingham* [1993] I.R.L.R. 372). See also REASONABLY.

UNFAIRLY PREJUDICED. “Unfairly prejudicial to the interests of some part of the members” (Companies Act 1985 (c.6) s.459). In deciding whether or not the conduct of a company’s affairs is unfairly prejudicial consideration is not limited to the members’ strict legal rights. The use of the word “unfairly” enables the court to have regard to wider equitable considerations (*Re A Company* (No.00477 of 1986)

[1986] P.C.C. 372). The court dismissed a motion to strike out a petition in which the petitioning shareholders of a company claimed that the directors had acted in a manner "unfairly prejudicial" to their interests by favouring a lower bid for the company's shares from a company promoted by the directors in preference to a higher bid from a competitor (*Re A Company (No.008699 of 1985)* [1986] P.C.C. 296). A company's decision to delay holding an extraordinary general meeting requisitioned by two members until a date some seven months after the date of requisition, although not in breach of section 368 of this Act, was held to be "unfairly prejudicial" to the members concerned (*McGuinness v Petitioners, The Times*, January 15, 1988). Conduct which was not discriminatory and affected all the members of a company equally could not be unfairly prejudicial to "some part" of the members; thus the failure of the directors to pay reasonable dividends could not constitute grounds for a petition under this section (*Re A Company (No.00370 of 1987)* [1988] 1 W.L.R. 1068). But this case was not followed in *Re Sam Weller* [1989] 3 W.L.R. 923, where it was held that conduct that affected the rights of all members equally might be unfairly prejudicial to the interests of some of them, since "interests" is a wider term than "rights" and members might have different interests even though their rights were identical. In circumstances where the only income for some shareholders was dividends on their shareholdings in the company in question a policy of low dividend payment might for them be "unfairly prejudicial" (*Re A Company (No.823 of 1987)* (1988) 133 S.J. 1297). A unilateral and secret exercise of the power of allotment of shares with the intention of reducing a shareholder's holding while increasing that of the party exercising the power was held to be blatantly "unfairly prejudicial" (*Re DR Chemicals* (1989) 5 B.C.C. 39). An allotment of shares to a majority shareholder without notice to the minority shareholder could be "unfairly prejudicial" within the meaning of this section (*Re A Company (No.005134 of 1986)*; *Ex p. Harries* [1989] B.C.L.C. 383). A valuation of a minority shareholding undertaken on the basis of a valuation of the whole block of shares, together with a premium if they would give control if sold, or a discount if they remained a minority, was held not to be "unfairly prejudicial" within the meaning of s.459 (*Re Castleburn* [1989] P.C.C. 386). The creation of shares at an extraordinary general meeting called without proper notice was "unfairly prejudicial" to the interests of those buying the shares. Failure to hold annual general meetings or prepare accounts was "unfairly prejudicial" to the interests of all the members of the company, not just some of them (*Re Company A (No.00789 of 1987)*, *Ex p. Shooter*; *Re Company A (No.3017 of 1987)*, *Ex p. Broadhurst* [1990] B.C.L.C. 384). The withholding of money owed to a subsidiary company by a parent company that exercised financial control over it was held not to be "unfairly prejudicial" to the interests of the minority shareholders in the subsidiary since the parent company withheld the payments in order to secure its own survival (*Nicholas v Soundcraft Electronics* [1993] B.C.L.C. 360). Mismanagement of a company could, in certain circumstances, amount to unfairly prejudicial conduct, but the courts would only reach such a view on rare occasions (*Re Elgindata* [1991] B.C.L.C. 959).

"Unfairly prejudicial to the interests of its creditors or members" (Insolvency Act 1986 (c.45) s.27(1)(a)). A negligent sale of a company's assets at less than their true value by an administrator was held to be insufficient to establish a claim for unfair prejudice under this section (*Re Charnley Davies* [1990] B.C.C. 605).

"Unfairly prejudices the interests of a creditor" (Insolvency Act 1986 (c.45) s.262(1)(a)). A voluntary arrangement whereby a bankrupt's leasehold interest in a

shop was to be sold was not unfairly prejudicial to the interests of the landlord, himself a creditor for rent arrears (*Re Mohammed Naeem (A Bankrupt) (No.18 of 1988)* [1990] 1 W.L.R. 48).

UNFINISHED. "Buttons finished or unfinished" (Finance Act 1928 (18 & 19 Geo. 5, c.17) s.9(1)): see *Newman Manufacturing Co v Marrable* [1931] 2 K.B. 297. See MATERIALS.

UNFIT. Bankruptcy renders a trustee "unfit" (*Re Roche*, 1 Con. & L. 306). But if the power of appointing new trustees be worded "in case the trustee shall become incapable to act", without the addition of the words "or unfit", a bankrupt trustee is not within the description; for by "incapable" is meant "personal incapacity", and not pecuniary embarrassment (*Re Watts*, 20 L.J. Ch. 337; *Turner v Maule*, 15 Jur. 761; *Re East*, 8 Ch. 735). Bankruptcy is none the less "unfitness" because occasioned by misfortune (*Re Adams*, 12 Ch. D. 634; see also *Re Barker*, 1 Ch. D. 43; *Re Hopkins*, 19 Ch. D. 61); but on obtaining his discharge and ceasing to be impecunious, a bankrupt trustee is no longer "unfit" (*Re Bridgman*, 29 L.J. Ch. 844).

Temporary absence abroad is not "unfitness" (*Re Moravian Society*, 26 Bea. 101); *secus*, of a settled residence abroad (*Mesnard v Welford*, 22 L.H. Ch. 1053; in this case the word was "incapable").

To impute that an overseer is "unfit to be trusted with money" is libel (*Cheese v Scales*, 12 L.J. Ex. 13).

Parent "unfit to have the custody of the children" (Guardianship of Infants Act 1886 (c.27) s.7): clear proof of conduct of an aggravated character had to be forthcoming before the court would deprive a father of his natural guardianship of his children (*Woolnoth v Woolnoth*, 86 L.T. 598, distinguishing *Skinner v Skinner*, 13 P.D. 90); see further *Bagnall v Bagnall*, 54 S.J. 738.

"Unfit for human habitation" (Manchester Corporation Water Works and Improvements Act 1867 (c. xxxvi) s.41) included not only unfitness owing to some structural or other defect in the building, but unfitness for any reason, as, e.g. insufficient ventilation: see *Hall v Manchester Corp*, 84 L.J. Ch. 732. See also FIT FOR, para.(2).

A house is not necessarily "unfit for human habitation" because it fails to comply with the Public Health Act 1936, or byelaws made under it (*Birchall v Wirrall UDC* (1953) 117 J.P. 384).

(Landlord and Tenant (War Damage) Act 1939 (c.72) s.4.) Business premises were unfit if business could not be carried on there owing to war damage notwithstanding that they could have been put right by the expenditure of a comparatively small sum (*Boudou v Thornton-Smith* [1941] 1 K.B. 561). Cp. FIT.

A bun containing metal (*J. Miller v Battersea BC* [1955] 3 W.L.R. 559); and a loaf of bread containing string (*Turner & Son v Owen* [1955] 3 W.L.R. 700); are not "unfit for human consumption" within s.9(1) of the Food and Drugs Act 1938 (c.56) (see Food and Drugs Act 1955 (c.16) s.8(1)). But an article of food which is going mouldy is *prima facie* unfit, whether or not there is evidence as to whether there would be any injury to health if it were eaten (*David Greig v Goldfinch* [1959] L.G.R. 304). Food can be "unfit" within the meaning of this section even if it can be shown that there would be no ill effects from its consumption (*Greig (David) v Goldfinch* (1961) 59 L.G.R. 304). See also UNWHOLESOME.

A wife who eleven years and three years before marriage had been admitted to a mental hospital, for periods of four weeks and two weeks respectively, for the purpose of undergoing shock treatment, was not "unfitted for marriage and the procreation of

children” within the meaning of s.9(1)(b)(ii) of the Matrimonial Causes Act 1965 (c.72) (*Bennett v Bennett* [1969] 1 W.L.R. 430).

“Unfit for human habitation”: Stat. Def., Housing Repairs and Rents Act 1954 (c.53) s.9.

“Unfit to drive through drink or drugs”: Stat. Def., Road Traffic Act 1960 (c.16) s.6(6).

“Unfit to be concerned in the management of a company” (Companies Act 1985 (c.6) s.300; now Company Directors Disqualification Act 1986 (c.46) ss.6(1)(b), 8(2)). Ordinary commercial misjudgement does not of itself constitute unfitness for the purposes of this section (*Re McNulty’s Interchange* [1988] B.C.L.C. 376). The non-payment by a company of sums due to the Crown in respect of pay-as-you-earn, national insurance contributions and value-added tax could not of itself be treated as evidence that the directors are “unfit” to be directors (*Re Sevenoaks Stationers (Retail)* [1991] Ch. 164). Two company directors who transferred stock from a company that was insolvent to a new company, paying 10 per cent of its value, were held to be “unfit” within the meaning of this section (*Keypack Homecare (No.2)* [1990] B.C.C. 117). A non-accountant director who relied upon an accountant co-director to produce audited accounts and file annual returns did not himself become “unfit” within the meaning of this section by virtue of the fact that no audited accounts were produced and no annual returns made by his co-director (*Re Cladrose* [1990] B.C.C. 11). A director, chairman and the largest shareholder in a company, who treated the company as his own, ignored the shareholders, failed to keep accounting records, deliberately failed to prepare accounts in time and pursued a course of investment ultra vires of the company, was (not surprisingly) held to be “unfit to be concerned in the management of a company” (*Re Samuel Sherman* [1991] 1 W.L.R. 1070). A director who, in order to retain control of a company, deliberately played fast and loose with his powers as a director, was “unfit” within the meaning of s.6 notwithstanding that he was acting in what he saw as the company’s best interests (*Re Looe Fish* [1993] B.C.C. 348). To create, immediately, a company similar to a previous one which had gone into insolvency, and, when the second company had gone the same way, to create a third company which also became insolvent, was held to be evidence of unfitness for the purposes of s.6 (*Re Linvale* [1993] B.C.L.C. 654). Directors who caused the company to incur expenditure for a purpose not connected with its trading purposes and failed to exercise proper stewardship over the company’s affairs were “unfit” within the meaning of this section (*Re A&C Group Services* [1993] B.C.L.C. 1297). As also was a director of two companies who failed to remit Crown moneys, failed to keep proper accounts and failed to keep clients’ moneys separate from his own (*Re Burnham Marketing Services; Secretary of State for Trade and Industry v Harper* [1993] B.C.C. 518). “Unfitness meant general unfitness, and past conduct could be relevant to a finding of present unfitness in the management of a company” (*Re Polly Peck International* [1993] B.C.C. 890).

The words “unfit to attend as a witness” in s.23(2)(a) of the Criminal Justice Act 1988 (c.33) apply not only to a person’s physical ability to attend at court but also to his mental capacity (*R. v Setz-Dempsey*; *R. v Richardson*, *The Times*, July 20, 1993).

“Unfit for human habitation”: Stat. Def., Housing Act 1985 (c.68) s.604.

See INABILITY; INCAPABLE; PAID OFFICER.

UNFORESEEN. An “unforeseen calamity” in an exception excusing the employment of a music hall artist, does not arise by a sale of the hall by its mortgagees (*Phillips v Hull Alhambra Co* [1901] 1 Q.B. 59).

“Unforeseen cause”: see *Hills v Sughrue*, 15 M. & W. 253.

“Unforeseen circumstances”, in an exception to a charterparty: see *Donaldson v Little*, 10 Sess. Cas. (4th Ser.) 413. Semble, slackness of trade is not within the phrase (*Dickenson v Fanshaw*, 7 T.L.R. 576; affirmed 8 T.L.R. 217).

“Unforeseen circumstances”. In relation to the frustration of the performance of a contract this means circumstances for which the contract makes no provision (*Tatem v Gamboa* [1939] 1 K.B. 132; cp. *Leavey (J.) & Co v Hirst & Co* [1944] K.B. 24).

The words “unforeseen contingencies or circumstances excepted” as a proviso in a contract for the sale of goods, held not to protect the sellers from liability to deliver the goods: see *Wills v Cunningham* [1924] 2 K.B. 220.

“Unforeseen obstacle”: see UNAVOIDABLE.

See INEVITABLE.

UNIFORM. Any item worn to show mutual association, in this case a black beret, can, subject to the de minimis rule, amount to a “uniform” contrary to the Public Order Act 1936 (c.6) s.1(1) without proof of its previous use as such (*O’Moran v DPP*; *Whelan v DPP* [1975] Q.B. 864).

See CONSTABLE.

UNINCORPORATED ASSOCIATION. Because there was no mutual understanding between all the members, no mutual rights and obligations and no rules governing control, the Conservative and Unionist Central Office was not an “unincorporated association” and did not therefore fall under the definition of “company” in s.526(5) of the Income and Corporation Taxes Act 1970 (c.10) (*Conservative and Unionist Central Office v Burrell* [1982] 2 W.L.R. 522).

UNINCUMBERED. “Unincumbered vessel”: see *The Independence*, 14 Moore P.C. 103; *The Grovehurst* [1910] P. 316, cited STATIONARY.

UNINSURED. “Warranted uninsured”, in a marine policy, was infringed by an honour policy, though such latter policy was void under Marine Insurance Act 1745 (c.37) (per Kennedy J., *Roddick v Indemnity Insurance* [1895] 1 Q.B. 836); but this point was not necessary to the actual decision, and though that decision was affirmed in the Court of Appeal on other grounds, the ruling of Kennedy J. on this point was questioned ([1895] 2 Q.B. 380). See further as to this kind of warranty, *General Insurance of Trieste v Cory* [1897] 1 Q.B. 335.

UNINTENTIONAL. An “unintentional” omission to pay the renewal on a patent means that the requirement was not present to the mind of the patentee, and does not include a case where he deliberately elected not to pay because he was under an erroneous, though bona fide, impression that it was not payable, see *Re Land* [1910] 2 Ch. 236.

See also ACCIDENTAL; CARELESSLY; FORGETFULNESS; INADVERTENCE; MISTAKE; NEGLIGENCE.

UNION. “Union”, for poor law purposes (Poor Removal Act 1861 (c.55) s.1; Poor Law Amendment Act 1834 (c.76) s.109): see *Machynlleth v Pool*, L.R. 4 Q.B. 592; *R. v Bristol*, 13 Q.B. 405; *R. v Priest Hutton*, 17 Q.B. 59. See further *Bootle v Whitehaven* [1903] 2 Ch. 142.

UNION

“Any union”, however formed, could be dissolved under s.11 of the Divided Parishes and Poor Law Amendment Act 1876 (c.61): see *Local Government Board v South Stoneham* [1909] A.C. 57. See also RELIEF.

See TRADE UNION.

UNION MEMBERSHIP AGREEMENT. A “union membership agreement” (Trade Union and Labour Relations Act 1974 (c.52) s.30(1)) included an agreement which contained a condition that the employee should be required to join a specified trade union. It was not essential that the agreement should confer on the employee an option to join a union of his choice (*Home Counties Dairies v Woods* [1977] I.C.R. 463).

UNIT. “Unit of employment” (Industrial Relations Act 1971 (c.72) ss.38–42). For every “unit of employment” there had to be an employer. Self-employed writers whose works were used by the BBC were not employed by the BBC, even if the work was commissioned, and their activities therefore could not be regarded as giving rise to a “unit of employment” (*Writers’ Guild of Great Britain v BBC*, *The Times*, September 28, 1973).

“Unit of employment”: Stat. Def., Industrial Relations Act 1971 (c.72) s.37(6).

“Units of electricity”: see Electricity Supply Act 1922 (12 & 13 Geo. 5, c.46) s.7.

UNIT TRUST. Stat. Def., Charging Orders Act 1979 (c.53) s.6.

“Unit trust scheme”: Stat. Def., Prevention of Fraud (Investments) Act 1958 (c.45) s.26(1).

UNIT TRUST SCHEME. Stat. Def., Financial Services and Markets Act 2000 s.243.

UNITARY AUTHORITY. Stat. Def., Water Resources Act 1991 (c.57) s.91B(8) inserted by Environment Act 1995 (c.25) s.58; Environment Act 1995 (c.25) s.91(1).

Stat. Def., Flood and Water Management Act 2010 s.6.

UNITARY COUNTY COUNCIL. Stat. Def., s.55(13) of the Local Government Act 2000 (c.22).

Stat. Def., “a county council that is the council for a county in which there are no district councils” (Local Government Act 2003 (c.26) s.59(1)).

UNITARY DISTRICT COUNCIL. Stat. Def., Local Democracy, Economic Development and Construction Act 2009 s.90.

UNITED KINGDOM. The United Kingdom is a union of England and Wales (Laws in Wales Act 1536 (c.3)) with Scotland, forming Great Britain (Union with Scotland Act 1706 (c.11)), and Northern Ireland (Union with Ireland Act 1800 (c.67); Government of Ireland Act 1920 (c.67)).

So, apart from interpretation clauses, the use of “United Kingdom” in statutes shows that only Great Britain and Northern Ireland, and not the Channel Islands or Isle of Man, are included therein: see BEYOND SEAS; BRITISH ISLANDS; BRITISH NEWSPAPER; HOME-TRADE SHIP; STATION; Merchant Shipping Act 1894 (c.60) s.4(1)(a)(b). See further *Re Johnson* [1903] 1 Ch. 834.

But its popular meaning may be wider. “I have no hesitation in saying that Jersey is, in popular language, a part of the United Kingdom” (per Mathew J., *Stoneham v Ocean Railway & General Insurance*, 19 Q.B.D. 239). That was a case on a policy which gave an insurance against “any bodily injury caused by any external accident happening within the United Kingdom ‘or on the continent of Europe’, or whilst proceeding from one European port to another in a decked vessel”; the insured was drowned off Jersey, and it was held that the insurer was liable on the policy. But Cave

J., in giving his judgment said, "Some light is thrown on this question by one of the conditions indorsed on the policy; 'this policy shall be void if the assured shall travel beyond the limits of Europe, or shall embark in any vessel with the intention of going beyond such limits'. That provision means that the policy shall be in force 'in Europe', and Jersey is in Europe". Semble, therefore, that the dictum that Jersey is comprised in "United Kingdom" was either not necessary to the decision, or otherwise that it was so controlled by the context. If this be not the explanation then it seems difficult to reconcile the dictum with the decision of all the judges present in Easter Term 1832, whereby it was held that "United Kingdom", in s.76 of the Larceny Act 1827 (c.29) (where the phrase stands unaffected by the context), did not include Jersey (*R. v Prowes*, 1 Moody, 349; see on this case *R. v Madge*, 9 C. & P. 29).

"United Kingdom" in commercial documents such as policies of insurance does not include the Channel Islands unless there is evidence to show a contrary meaning (*Navigators and General Insurance Co v Ringrose* [1962] 1 W.L.R. 173).

"Matter or thing done or to be done in any part of the United Kingdom": see *Maple v Inland Revenue Commissioners* [1908] A.C. 22, cited TO BE DONE.

A British ship on the high seas is not part of the territory of the United Kingdom, and a crime committed in her is not committed in the United Kingdom within s.41 of the Army Act 1881 (c.58) (*R. v Gordon-Finlayson, Ex p. An Officer* [1941] 1 K.B. 171).

A gift in a will "to promote the defence of the United Kingdom" is a valid charitable gift, and refers to the United Kingdom as constituted from time to time (*Re Driffl* [1950] Ch. 92).

"United Kingdom passport" (Commonwealth Immigrants Act 1962 (c.21) s.1(3)) does not cover a passport issued to a citizen of the United Kingdom and Colonies by the government of a colony which had been established by the royal prerogative (*R. v Secretary of State for Home Department, Ex p. Bhurosah* [1968] 1 Q.B. 266).

A policy was a "UK policy" under the Policyholders Protection Act 1975 (c.75) s.4, if had any of the obligations under the contract evidenced by the policy been performed at the relevant time, such performance would have formed part of an insurance business which the insurer was authorised to carry on in the United Kingdom, regardless of whether the obligations would have been performed in the United Kingdom (*Ackman v Policyholders' Protection Board* [1993] 2 Lloyd's Rep. 533).

Stat. Def., including territorial waters adjacent to any part of the United Kingdom (Sch.6 para.147 to the Finance Act 2000 (c.17)).

"United Kingdom Waters": Stat. Def., Merchant Shipping (Salvage and Pollution) Act 1994 (c.28) s.8(5); Police Act 1964 (c.48) s.19(5A) added by Criminal Justice and Public Order Act 1994 (c.33) s.160(1); Police Act 1996 (c.16) s.31(5).

Stat. Def., Interpretation Act 1978 (c.30) Sch.1.

See NATIONAL OF THE UNITED KINGDOM and RESIDENT OF THE UNITED KINGDOM.

UNITED KINGDOM NATIONAL. Stat. Def., "means an individual who is—(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen; (b) a person who under the British Nationality Act 1981 (c.61) is a British subject; or (c) a British protected person within the meaning of that Act." (s.129 of the Enterprise Act 2002 (c.40).)

See also NATIONAL OF THE UNITED KINGDOM.

UNITED KINGDOM PERSON. Stat. Def., “means a United Kingdom national, a Scottish partnership or a body incorporated under the law of any part of the United Kingdom” (s.11(1) of the Export Control Act 2002 (c.28)).

UNITED KINGDOM POLICE FORCE. Stat. Def., s.16(1) of the Armed Forces Act 2001 (c.19).

UNITED KINGDOM STOCK. Stat. Def., s.138 of the Finance Act 2002 (c.23).

UNITED KINGDOM WATERS. Stat. Def., “waters within the seaward limits of the territorial sea” (s.76(7) of the Anti-terrorism, Crime and Security Act 2001 (c.24)).

UNITED NATIONS. See ACTS CONTRARY TO THE PURPOSES AND PRINCIPLES OF THE UNITED NATIONS.

UNITED STATES. The term “United States” in the United States Carriage of Goods by Sea Act 1936 s.13 includes the Panama Canal Zone (*Stafford Allen & Sons v Pacific Steam Navigation Co* [1956] 1 W.L.R. 629).

UNITY. Unity of persons, e.g. husband and wife, on which see *Earle v Kingscote* [1900] 2 Ch. 585, cited NEED NOT.

“Unity of possession” is where a man has two estates or rights in land and holds them both in his own hands (Cowel; Jacob). See hereon *Pyer v Carter*, 26 L.J. Ex. 258, cited NECESSARY; *Barnes v Loach*, 4 Q.B.D. 494; *Watts v Kelson*, 6 Ch. 166; *Kay v Oxley*, L.R. 10 Q.B. 360, and *Bayley v Great Western Railway*, 26 Ch. D. 434, all cited RIGHT; *Thomson v Waterlow*, L.R. 6 Eq. 36; *Langley v Hammond*, L.R. 3 Ex. 161; *Barkshire v Grubb*, 18 Ch. D. 616; and *Brown v Alabaster*, 37 Ch. D. 490, all cited WAYS.

Unity of possession or ownership of dominant and servient tenements precludes a prescriptive right to an easement: see PRESCRIPTION.

UNIVERSAL HEIR. “What we call ‘executor and residuary legatee’ is, in the civil law, ‘universal heir’ . . . The proper term, in the civil law, as to goods, in *haeres testamentarius*, and ‘executor’ is a barbarous term unknown to that law; therefore, a person named as ‘universal heir’ in a will, in my opinion, would have a right to” probate (per Hardwicke C., *Androvin v Poilblanc*, 3 Atk. 299).

UNIVERSITY. The word “university” is not a word of art and whether or not an educational institution can claim to be a university or not must depend on whether an ordinary man of good education of university standard would consider that the institution in question is one. The fact that an institution possesses all or most of the essential qualities of a university does not necessarily prove that it is a university. The onus of proving that an institution is a university must lie upon the claimant (*St. David’s College, Lampeter v Ministry of Education* [1951] 1 All E.R. 559).

“University”, in a Cambridge Rating Act, held to mean the university for the time being, so as to include colleges incorporated into the university after the Act (*Downing College v Purchas*, 3 B. & Ad. 162).

Stat. Def., Universities of Oxford and Cambridge Acts 1877 (c.48) s.2, and 1923 (c.33) Schedule; National Health Service Act 1946 (c.81) s.79(1); Finance Act 1972 (c.41) Sch.5 Group 6; Sex Discrimination Act 1975 (c.65) s.82; Race Relations Act 1976 (c.74) s.78; Value Added Tax Act 1983 (c.55) Sch.6 Group 6; Further and Higher Education Act 1992 (c.13) s.90(3); Education (Mandatory Awards) Regulations 1998 (SI 1998/1166) reg.2.

Stat. Def., Equality Act 2010 s.94.

See COLLEGE; EMOLUMENT; PROFESSOR.

UNJUST. Scales and weights were not “light or unjust” (Weights and Measures Act 1859 (c.56) s.3) if an inaccuracy in them was against the seller (*Brooke v Shadgate*, L.R. 8 Q.B. 352). If scales or a weighing machine became, e.g. by wear, affected so as to require adjustment and to effect such adjustment something was added, they or it might not have been “unjust” (*London & North Western Railway v Richards*, 2 B. & S. 326; *Great Western Railway v Baille*, 34 L.J.M.C. 31, cited CORRECT); *secus*, if imperfect, and only to be rectified by a temporary adjustment (*Carr v Stringer*, L.R. 3 Q.B. 433).

A weighing machine is “false or unjust” within s.25 of the Weights and Measures Act 1878 (c.49) and s.16 of the Weights and Measures Act 1963 (c.31), if paper is, however honestly, placed under its scoop causing the machine to indicate a weight of the commodity sold greater by the weight of the paper than its own weight (*Lane v Rendall* [1899] 2 Q.B. 673; see hereon *R. v Baxendale*, 44 J.P. 763; *Horder v Roberts*, 44 J.P. 256). Cp. *Great Western Railway v Bailie*, above. And the acquiescence or request of the purchaser is immaterial (*London CC v Payne* [1904] 1 K.B. 194); but a trade usage of weighing the paper with a commodity is admissible evidence to disprove a charge, under s.26, above, that a fraud was “wilfully committed” (*King v Spencer*, 91 L.T. 470). Honestly using a machine, correct in itself, in a particular way for a particular purpose and with the knowledge of the purchaser, is not within s.25 (*Withall v Francis*, 42 J.P. 612). See further *Crick v Theobald*, 64 L.J.M.C. 216, cited TRADE; *London CC v Payne* [1905] 1 K.B. 410; cp. *Stone v Tyler* [1905] 1 K.B. 290, cited USING.

“Unjust or oppressive” (Fugitive Offenders Act 1881 (c.69) s.10; Fugitive Offenders Act 1967 (c.68) s.8(3)). It was held that it would have been “unjust or oppressive” to have granted extradition in a case where the offence had been committed more than nine years previously (*R. v Brixton Prison Governor, Ex p. Naranjan Singh* [1962] 1 Q.B. 211). See also *Armah v Government of Ghana* [1968] A.C. 192). It is not “unjust or oppressive” to return a fugitive offender to India when he is charged with forgery, even though he alleges that as he has been branded as a political spy he would not be given a fair trial (*R. v Governor of Brixton Prison, Ex p. Mubarak Ali Ahmed* [1952] 1 T.L.R. 964). In deciding whether it would be unjust or oppressive to return a fugitive the court can only have regard to circumstances relevant to the particular ground or grounds on which the application for release is based, and where, as here, the ground put forward was passage of time the court could not have regard to the question whether or not it would be unjust or oppressive to return him for some other reason (*R. v Governor of Pentonville Prison, Ex p. Narang* [1978] A.C. 247). See also *Kakis v Governor of the Republic of Cyprus* [1978] 1 W.L.R. 799 and *Re Tarling* [1979] 1 W.L.R. 1417.

“Unjust” (Criminal Justice Act 1967 (c.80) s.40(1)). The activation of a suspended sentence under this section is “unjust” within the meaning of the section where the new offence is comparatively trivial and, particularly, where it is in a different category from that for which the suspended sentence was imposed (*R. v Moylan* [1970] 1 Q.B. 143).

UNJUST ENRICHMENT. For the tests to be applied in determining whether unjust enrichment has occurred, see *Cressman v Coys of Kensington (Sales) Ltd* [2004] 1 W.L.R. 2775, CA.

UNJUST OR OPPRESSIVE. For the considerations to be applied in determining whether an extradition would be unjust or oppressive within the meaning of the Extradition Act 1989 s.11(3)(b), see *Woodcock v Government of New Zealand* [2004] 1 W.L.R. 1979, QBD.

For consideration of what amounts to unjust or oppressive extradition, see *Kociukow v District Court of Bialystok III Penal Division* [2006] EWHC 56 (Admin).

Delay will not generally cause extradition to be unjust and oppressive where it was caused by the person's deliberate flight from a jurisdiction in which he or she was bailed to appear; that aside, delay will cause injustice of extradition only where it makes fair trial impossible (*Gomes v Government of the Republic of Trinidad and Tobago* [2009] UKHL 21).

UNJUSTIFIABLE. As to what was "unjustifiable extravagance in living" (Bankruptcy Act 1883 (c.52) s.28(3)(d)): see *Ex p. Thorner, Re Barlow* [1886] W.N. 207.

UNKNOWN. See CONTENTS UNKNOWN; QUANTITY AND QUALITY UNKNOWN; CLEAN BILL OF LADING; GOOD ORDER.

UNLAWFUL. A thing may be unlawful in two senses, (1) as unenforceable by law, (2) as punishable by law; e.g. an agreement for sexual immorality would furnish no right of action between the parties, but is not punishable (per Bramwell B., *Cowan v Milbourn*, L.R. 2 Ex. 236). Cp. ILLEGAL; ULTRA VIRES; UNLAWFUL GAMING.

"Entertainments which are not unlawful" (Local Government (Miscellaneous Provisions) Act 1982 (c.30) Sch.3 para.3A(c), as amended). "Unlawful" in this Schedule means "criminal". It cannot be extended to cover, for example, everything done against sound morality (*McMonagle v Westminster City Council* [1990] 2 W.L.R. 823). But on appeal the House of Lords held ([1990] 1 W.L.R. 823) that the words "which are not unlawful" were to be treated as surplusage in view of the evident intention of Parliament in enacting the relevant legislation; and accordingly the prosecution did not have to prove that the entertainment provided was not unlawful.

"Unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it" (Sexual Offences (Amendment) Act 1976 (c.82) s.1(1)(a)). The House of Lords held that it was clearly unlawful to have sexual intercourse with any woman without her consent, whether within marriage or not, and that the use of the word "unlawful" in the subsection added nothing. There were no rational grounds for putting any gloss on the word and it should be treated as mere surplusage (*R. v R.* [1991] 4 All E.R. 481).

"Unlawful wounding" (Offences against the Person Act 1861 (c.100) s.20). To establish the offence of unlawful wounding under this section the prosecution must prove either that the defendant intended or that he actually foresaw that his act would cause physical harm to some person (*R. v Savage; DPP v Parmenter* [1991] 3 W.L.R. 914).

"Unlawfully at large" (Police and Criminal Evidence Act 1984 (c.60) s.17(1)(d)). A person who, being detained in hospital for assessment under s.6(2) of the Mental Health Act 1983 (c.20), went absent without leave was "unlawfully at large" within the meaning of s.17(1)(d) (*d'Souza v DPP* [1992] 1 W.L.R. 1073).

A sentence can be "unlawful" in the sense of the court's having failed to apply the mandatory sentence, but it remains effective unless and until varied or quashed (*R v Reynolds* [2007] EWCA Crim 538).

“The man in the street, if asked what an unlawful act was, would probably answer ‘a crime’. He might give as an example theft, obtaining money by false pretences, or assault occasioning actual bodily harm. He might or might not know that each of these was also a civil wrong (or tort) but it is unlikely that civil liability would be in the forefront of his mind. The reaction of a lawyer would be more informed but it would not, I suggest, be essentially different. In its ordinary legal meaning ‘unlawful’ certainly covers crimes and torts (especially intentional torts). Beyond that its scope may sometimes extend to breach of contract, breach of fiduciary duty, and perhaps even matters which merely make a contract unenforceable, but the word’s appropriateness becomes increasingly debatable and dependent on the legal context.” (*Revenue and Customs Commissioners v Total Network SL* [2008] UKHL 19 per Lord Walker of Gestingthorpe at [90]–[91].)

For the purposes of s.242 of the Proceeds of Crime Act 2002, “It is to be noted that, although unlawful conduct is by definition ‘criminal’, recovery proceedings need not be related to criminal proceedings for any particular offences, nor even to criminal conduct of the person holding the property (subject to a limited ‘good faith’ defence: see s 266 below). Nor is there any requirement for the particular offences constituting the unlawful conduct to be identified. As I said in *Olupitan*, following previous authority: ‘. . . the Director need not allege the commission of any specific criminal offence, provided there are set out the matters alleged to constitute “the particular kind or kinds of unlawful conduct” by or in return for which the property was obtained. This approach in my view follows from the wording of the Act. Use of the term “unlawful conduct”, rather than reference to a criminal offence or offences, is a clear indication that the power is not so restricted.’ (para 22)” (*Gale v Serious Organised Crime Agency* [2010] EWCA Civ 759).

See VOID.

See WITHOUT LAWFUL AUTHORITY.

UNLAWFUL ASSEMBLY. “Three or more may commit an unlawfull assembly, a riot, or a rout” (Co. Litt. 257A). Cp. REBELLION.

See RIOT; ROUT.

UNLAWFUL COPIES. “Unlawful repetitions, copies, and imitations” (Fine Arts Copyright Act 1862 (c.68) s.11) was a “phrase not well considered, but it means copies, etc. wrongfully made, i.e. without the necessary consent” (per Esher M.R., *Tuck v Priest*, 19 Q.B.D. 629; see hereon *Pollard v Photographic Co*, 40 Ch. D. 345).

See COPY.

UNLAWFUL DISCRIMINATION. “Unlawful . . . to discriminate” (Sex Discrimination Act 1975 (c.65) s.29(1)). The practice of the owners of a wine bar not to serve women standing at the bar where they served men, was held to be “unlawful” discrimination under this section, notwithstanding that they served women in another part of the premises (*Gill v El Vino Co* [1983] Q.B. 425). It was also held to be unlawful discrimination under this section for a friendly society to bar, by its rules, women members from becoming delegates to the governing body of the society; in that the society was “concerned with the provision” of facilities by way of insurance (*Jones v Royal Liver Friendly Society*, *The Times*, December 2, 1982).

“Unlawful . . . to discriminate” (Race Relations Act 1976 (c.74) s.4(2)). The manager of an amusement centre who was dismissed for refusing to carry out his

UNLAWFUL

employer's instruction not to admit blacks was unlawfully discriminated against within the meaning of this section (*Showboat Entertainment Centre v Owens* [1984] 1.C.R. 65).

See also PROVISION.

UNLAWFUL GAMING. See GAMING.

UNLAWFUL POSSESSION. See POSSESSION.

UNLAWFUL PRESENCE IN UNITED KINGDOM. See IN BREACH OF THE IMMIGRATION LAWS.

UNLAWFUL PURPOSE. An "unlawful purpose" within s.4 of the Vagrancy Act 1824 (c.83) means the intention to commit (as distinguished from having been actually guilty of: *R. v Simpson*, 15 L.P. 246, 790) an offence punishable criminally, and as distinguished from what is only immoral, e.g. fornication (*Hayes v Stevenson*, 3 L.T. 296); but it is immaterial whether that intention is intended to be carried out in the place where the offender is found (*Re Joy*, 22 L.T.O.S. 80). See hereon *Kirkin v Jenkins*, 32 L.J.M.C. 140. Cp. UNLAWFULLY.

UNLAWFUL SEXUAL INTERCOURSE. Sexual Offences Act 1956 (c.69) s.17(1): means "illicit", i.e. outside the bond of marriage (*R. v Chapman* [1959] 1 Q.B. 100).

UNLAWFULLY. "Unlawfully" is used exceptionally in a wide general sense as regards conspiracy; but its ordinary import is an act which is "forbidden by some definite law"; and does not embrace that which is merely immoral (per Stephen J., *R. v Clarence*, 22 Q.B.D. 23; see also judgment of Wills J.). But an act which would give a right to a judicial separation would be done "unlawfully" (*Clarence*). See further MALICE. Cp. UNLAWFUL PURPOSE; UNLAWFUL.

The offence of "unlawfully and wilfully" coursing, etc. or killing or wounding "any deer kept or being in the unclosed part of any forest, chase, or purlieu" (Larceny Act 1861 (c.96) s.12), was not committed if the act was done outside the limits of the forest, chase, or purlieu, though it was on neighbouring land where the alleged offender had no right and though the deer had just come from its haunt in the forest; for "unlawfully" there, did not mean in contravention of the rights of a private individual, but of the criminal law of the land; as regards the phrase "kept or being", the section meant that the act had to be done in the unclosed part of the forest, chase, or purlieu, and that it was criminal if done there in respect of a deer which was either "kept" there by the owner of the forest, etc. or which happened "to be" there; and the alleged offender showed that he "came lawfully by such deer" the carcass of which might be found in his possession (s.14) if he showed that he had not "unlawfully" killed it within s.12 (*Threlkeld v Smith* [1901] 2 K.B. 531).

The criminal offence of "unlawfully and wilfully" killing a house dove or pigeon (Larceny Act 1861 (c.96) s.23) was not committed if it was killed in the honest idea of protecting crops, although to do so might have been actionable (*Taylor v Newman*, 32 L.J.M.C. 186; see further *R. v Simpson*, 32 L.J.M.C. 208), but it was no defence that the defendant believed the pigeon was a wild one: see *Horton v Gwynne* [1921] 2 K.B. 661; distinguished *Farey v Welch* [1929] 1 K.B. 388. "Unlawfully and wilfully" in this section meant "intentionally and without a lawful excuse". An honest mistake was no defence (*Cotterill v Penn* [1936] 1 K.B. 53). In the very next section of the same Act, relating to taking fish, "unlawfully and wilfully" meant "unlawfully and intentionally"; for that section created an offence in the nature of poaching (*Hudson v McRae*, 33 L.J.M.C. 65). See WILFUL AND MALICIOUS; WILFULLY.

The criminal offence of “unlawfully and maliciously” killing, maiming or wounding any dog, bird, beast, or other animal (Malicious Damage Act 1861 (c.97) s.41), was not committed by placing poisoned flesh in an enclosed garden to kill a dog habitually straying there (*Daniel v Janes*, 2 C.P.D. 351), nor by shooting fowls which were damage feasant (*Smith v Williams*, 37 S.J. 11). So, to shoot a dog when it was believed to be necessary for the protection of your own, or your master’s, property, was not to “unlawfully and maliciously” kill it, within this section (*Miles v Hutchings* [1903] 2 K.B. 714); so, of setting a trap in a garden to catch cats trespassing there (*Bryan v Eaton*, 40 J.P. 213). See also Protection of Animals Act 1911 (c.27) s.1.

The criminal offence of “unlawfully and maliciously” damaging property (Malicious Damage Act 1861 (c.97) s.51) was not committed unless the act was wilful (*R. v Pembliton*, L.R. 2 C.C.R. 122); but wilfulness was implied if the act was reckless and the damage its natural consequence (*R. v Welch*, 1 Q.B.D. 23), or the damage was excessive even if the act was done under a bona fide claim of right (*R. v Clemens* [1898] 1 Q.B. 556).

“Unlawfully and maliciously would or inflict any grievous bodily harm” (Offences Against the Person Act 1861 (c.100) s.20): see WOUND; INFLICT; GRIEVOUS BODILY HARM.

The expression “unlawfully fail” in an information was held to be capable of covering failure through negligence to comply with the requirements of the Road Traffic Act 1930 (c.43) s.49, of making a vehicle keep to a particular line of traffic when directed to do so by a police constable (*Pontin v Price*, 150 L.T. 177).

Stat. Def., Protection of Aircraft Act 1973 (c.47) s.1(6).

UNLAWFULLY AT LARGE. A person who is not liable to be detained cannot be said to be unlawfully at large (*R. (Lunn) v Governor of Moorland Prison* [2006] EWCA Civ 700).

UNLESS. “Unless”, in a clause in a marine policy “free from average unless general”, has the same meaning as “except” (*Wilson v Smith*, 3 Burr. 1556).

“Unless” is probably of like value as “except” in creating a condition precedent (see *Re Dickinson, Ex p. Rosenthal*, 51 L.J. Ch. 736).

Held not to be equivalent to “until” (*Welch v Royal Exchange Assurance* [1939] 1 K.B. 294).

A lessee’s covenant not to do a thing “unless” he makes a stipulated payment gives him permission to do the thing on making the payment (per Pollock C.B., *Legh v Lillie*, 30 L.J. Ex. 27); so, if the word were “under” a stipulated payment, or “except” the payment be made (*Legh*).

But “unless the Local Government Board otherwise direct” (Public Health Act 1875 (c.55) s.175) did not enable the Board to order that land compulsorily acquired under s.176 be used for a purpose inconsistent with that for which it was acquired; the phrase simply qualified the exigency of s.175 in compelling an immediate sale of land not required for the purpose for which it was acquired (*Att-Gen v Hanwell* [1900] 2 Ch. 377). See further *Att-Gen v Pontypridd* [1906] 2 Ch. 257; but see Public Health (Amendment) Act 1907 (c.53) s.95, which qualified ss.175, 176 of the Public Health Act 1875 (c.55), and enabled a local authority (with the approval of the Local Government Board) to appropriate land it might have acquired to other purposes than those for which it was acquired, if not required for those purposes.

UNLESS

“Unless he shall have paid all such rates” he shall not be put on the burgess list (Municipal Corporations Act 1835 (c.76) s.9) meant that the payment must have been the person’s own act (*R. v Bridgnorth*, 2 P. & D. 317).

“Unless” the bishop shall be of a contrary opinion: see per Esher M.R., *R. v London (Bishop)*, 24 Q.B.D. 213.

“Unless the contrary appears”: see *Re Highett and Bird* [1903] 1 Ch. 287, cited CONTRARY.

“Unless he attempts to . . . become bankrupt”: for the meaning of these words in a will, see *Re Evans* [1920] 2 Ch. 304.

“Unless error or fraud can be proved”: see *Royal Commission on Sugar Supply v Hartlepool’s Seaton SS Co* [1927] 2 K.B. 419. See further ERROR.

“Unless the Court of Appeal shall enlarge the time”, within the old R.S.C. Ord.58 r.15: see *Re Wigfull & Son’s Trade Mark* [1919] 1 Ch. 52.

“Unless the court otherwise directs” (Courts Act 1971 (c.23) s.11(1)). These words do not empower the court to direct that a sentence shall take effect from a date earlier than that on which it was imposed (*R. v Gilbert* [1975] 1 W.L.R. 1012).

“Unless there shall be no qualified pilot to be obtained”: see per Esher M.R., *The Carl XV* [1892] P. 324, 330.

“Unless the contrary is shown” (R.S.C. Ord.10 r.1(3)(a)). These words shall be given their full meaning and not restricted to mean only “unless the contrary is shown by the defendant” (*Abu Dhabi Helicopters v International Aeradio* [1986] 1 All E.R. 395; *Hodgson v Hart DC* [1986] 1 All E.R. 400).

UNLESS HE IS IN BREACH OF HIS OBLIGATION. As to the use of this expression in the Standard Conditions of Sale, see *Alchemy Estates Ltd v Astor* [2008] EWHC 2675 (Ch); the phrase “requires attention to be focused on the current position . . . but also having regard to any previous breach of such obligation which has any significant continuing effects as at that time” (per Sales J. at para.48).

UNLESS THE CONTEXT OTHERWISE REQUIRES. “[Counsel] relies, of course, on the flexibility of the new definitions in 1999 because ‘claimant’ means the person who commences the proceedings unless the context otherwise requires. In considering what that means, another issue of construction may possibly arise in that the words ‘in this Agreement, unless the context otherwise requires’ may be ambiguous. The context may mean, as Mr Worthington contends it does, the context in which the Agreement is made, in other words, the whole background or the matrix of fact. It may, however, be that the relevant context is the context in the Agreement itself, in other words the context in which the word is used from time to time and place to place in the Agreement. For my part this does not seem to matter much. The word ‘claimant’ must of course be looked at in the context of the sentence or paragraph in the Agreement in which it is placed to see how it fits in with the Agreement read as a whole.” (*Phillips v Rafiq* [2007] EWCA Civ 74 per Ward L.J. at [21].)

UNLIKELY. Marine Insurance Act 1906 (c.41) s.60(2): connotes a degree of probability somewhere between mere uncertainty and inevitability (*Court Line v R.*, 61 T.L.R. 418, 424).

“Unlikely to recover” means that there is a definite balance of probability that the person will not recover (*Davis v Davis* [1943] S.A.S.R. 203).

UNLIKELY TO BE DISPUTED. In r.37 of the Coroners Rules 1984 the permission to admit documentary evidence that is “unlikely to be disputed” does not

refer to evidence that is in practice unlikely to be challenged but to evidence as to which there is no relevant dispute (*R. (Paul) v Inner West London Assistant Deputy Coroner* [2007] EWCA Civ 1259).

UNLIMITED COMPANY. Stat. Def., Companies Act 2006 s.3.

UNLIQUIDATED DAMAGES. See LIQUIDATED DAMAGES; CREDITOR.

UNLIQUIDATED DEMAND. See LIQUIDATED DEMAND.

UNLIQUIDATED DEBT. (Bankruptcy Act 1914 (c.59) Sch.1 para.9.) Prima facie all cases of damages to be ascertained by a jury, are in the nature of unliquidated debts; and a claim is not any the less a claim for unliquidated damages because a figure has been set on the damages for the purposes of another part of the claim (*Re Rickett, Ex p. Insecticide Activated Products v Official Receiver* [1949] 1 All E.R. 737).

UNLOADING. The person carrying on the “process of unloading” within reg.41 of the Docks Regulations 1934 (No.279) was held not to be the shipowner but the stevedore or dock authority (*Mullis v United States Lines Co* [1969] Lloyd’s Rep. 109).

The cleaning of spillage after the bagged cargo of castor seed has been removed from the hold was “unloading” within the meaning of the Docks Regulations 1934 (No.279) (*Mace v Green (R.H.) and Silley Weir* [1959] 2 Q.B. 14).

“Unloading of vessels” (Standard Industrial Classification, Order XIX, Minimum List Heading 705) means only the discharge from the vessel of its cargo, and did not cover all the procedures involved in controlling the import up to the time the cargo left the quay (*Colton Controllers (Liverpool) v Secretary of State for Employment and Productivity* [1969] 2 Lloyd’s Rep. 323).

See LOAD.

UNMARRIED. The primary meaning of “unmarried” is “never having been married”, or “without ever having been married” (*Clarke v Colls*, 9 H.L. Cas. 601; *Dalrymple v Hall*, 16 Ch. D. 715; *Re Sergeant*, 26 Ch. D. 575); but it is a word of flexible meaning, and “slight circumstances, no doubt, will be sufficient to give the word its other meaning” of “not having a husband, or wife, at the time in question” (per Pearson J., *Re Sergeant*, above), so as to exclude only the marital right. In *Re Lesingham* (24 Ch. D. 703) this secondary meaning was attached to the word as used thus, “upon trust to pay unto J. H., spinster, if she be then ‘sole and unmarried’”. So, of the phrase “sole and intestate” (*Hardwick v Thurston*, 4 Russ. 380).

The primary meaning of “unmarried” is “not having been married” (*Soutar’s Trustees v Spence* (1937) S.L.T. 207; *Re Reilly* [1935] I.R. 352). The secondary meaning is “having no spouse living” at the material time. The addition of the words “without issue” makes it necessary to give the words the secondary meaning (*Re Reilly*, above).

The secondary sense was also attached to “unmarried” in the following cases: *Clarke v Colls*, above; *Pratt v Mathew*, 25 L.J. Ch. 409, 686; *Re Gratton*, 5 W.R. 795; *Blagrove v Coore*, 27 Bea. 138; *Mitchell v Colls*, 29 L.J. Ch. 403; *Day v Barnard*, 30 L.J. Ch. 220; *Re Sanders*, L.R. 1 Eq. 675, followed in *Re King*, 62 L.T. 789; *Re Chant* [1900] 2 Ch. 345, *Re Jones* [1915] 1 Ch. 246; *Re Ellis’s Settlement* [1921] 1 Ch. 230.

In *Maberley v Strobe*, 3 Ves. 452, Arden M.R., dealing with “unmarried” as used in the Poor Relief Act 1691 (c.11) s.7, said “the legislature meant by ‘unmarried’, ‘not having a wife at the time’; but that is not the usual construction of that word in a will”.

But the primary meaning was adhered to in: *Blundell v De Falbe*, 57 L.J. Ch. 576; *Heywood v Heywood*, 30 L.J. Ch. 155; *Dalrymple v Hall*, above; *Re Sergeant*, above;

UNMARRIED

Norris v Barber [1873] W.N. 180; *Re Thistlethwayte*, 24 L.J. Ch. 712; *Bell v Phyn*, 7 Ves. 458; *Re Fanshawe*, 48 S.J. 525; *Roberts v Kilmore (Bishop)* [1902] 1 Ir. R. 333.

Bequest to A's "next of kin in blood, as if A had died unmarried", means A's nearest of kin (*Halton v Foster*, 3 Ch. 505, cited NEXT OF KIN).

When a legacy is given to a daughter, who at the date of the will has never been married, and the gift is conditional upon the legatee being "unmarried" at a given time, the word "unmarried" may properly be construed "a spinster", and not "a widow" (*Re Saunders*, 3 K. & J. 156).

A gift to an "unmarried" person does not mean that he is to remain unmarried (*Jubber v Jubber*, 9 Sim. 503; *Hall v Robertson*, 23 L.J. Ch. 241; see further Wms. Exs. (13th edn), 696). In *Hall v Robertson* it was held that a testamentary gift to A for life, and, at his death, "to his son and unmarried daughters as he may by will direct", meant in the case of daughters, those who were unmarried at the date of the gift.

"So long as she 'continues' unmarried" is not equivalent to "during widowhood", and a divorced woman, if remaining unmarried, continues entitled (*Knox v Wells* [1883] W.N. 58). A gift to E (a married woman, but who at the date of his will and of his death was living with the testator as his wife), "during such time as she should remain unmarried", was held by North J. to be valid, the words meaning during such time as she should remain in the same state as she was whilst living with the testator (*Re Burlinson*, 107 L.T. 82).

If donee shall die "unmarried or intestate": see *Lightburne v Gill*, 3 Brown P.C. 250, cited INTESTATE.

A gift of dividends to a woman "during widowhood" cannot be for longer than her life, because the status of widowhood must determine with the life of the widow; but if the gift be "so long as she remain single and unmarried", then, semble, it is an absolute gift of the corpus: see *Rishton v Cobb*, 9 L.J. Ch. 110; *Re Howard* [1901] 1 Ch. 412; see also *Re Mason* [1910] 1 Ch. 695, in which case, however, there was a gift over, which fact made a difference.

See WITHOUT HAVING BEEN MARRIED; FEME; SPINSTER.

UNMARRIED COUPLE. Stat. Def., Social Security Act 1986 (c.50) s.20; "a man and woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances" (Jobseekers Act 1995 (c.18) s.35(1)); "a man and woman who are not married to each other but are living together as husband and wife" (Social Fund Winter Fuel Payment Regulations 1998 (SI 1998/19) reg.1(2)).

Stat. Def., "means a man and a woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances" (s.17 of the State Pensions Credit Act 2002 (c.16)).

UNMARRIED DAUGHTERS. In a gift to a testator's "five unmarried daughters", the words "unmarried daughters" are the material words; he only had three daughters in all, two of whom were unmarried; those two took to the exclusion of the third who was married (*Re Dutton* [1893] W.N. 65).

UNMERCHANTABLE. Stat. Def., Sale of Goods Act 1979 (c.54) s.15(3).

UNNATURAL. "Has died... an unnatural death" (Coroners Act 1988 (c.13) s.8(1)(a)). Where a natural death was accompanied by concurrent events, such as failure to provide medical care or emergency services, which themselves might be a cause of death, then the coroner should consider whether the death was thereby rendered "unnatural" within the meaning of this section. A death from asthma in a

chronic asthmatic was held to be from natural causes and accordingly the coroner had no power to conduct an inquest (*R. v Poplar Coroner, Ex p. Thomas* [1993] 2 W.L.R. 547).

A death by natural causes which should not have been allowed to happen is unnatural within the meaning of s.8(1) of the Coroners Act 1988 (*R. v Inner London North Coroner, Ex p. Touche* [2001] EWCA Civ 383; [2001] 2 All E.R. 752, CA).

UNNECESSARY. See **NECESSARY**. An act, e.g. one executor leaving assets in the sole control of his co-executor, is not “unnecessary” if done in the regular course of business (*Re Gasquoine* [1894] 1 Ch. 470).

UNNECESSARY DANGER. An exception in a policy against accidental death, after an enumeration of things obviously dangerous, added: “or otherwise wilfully, wantonly, or negligently, expose himself to any unnecessary danger”; held, that the insured (who was of a strong constitution, a good swimmer, and accustomed to cold water) had not courted “unnecessary danger” by bathing in deep water from a boat on a cold and stormy evening in April, whereby he was drowned (*Phillips v General Accident Assurance*, 34 Sc. L.R. 47).

UNNECESSARY HIGHWAY. “It appears . . . that a highway . . . is unnecessary” (Highways Act 1980 (c.66) s.116). In deciding whether a public right of way was unnecessary for the purposes of a stopping-up order under this section the court must have regard to the use made of the way for recreational purposes as well as for getting to a specific destination (*Ramblers Association v Kent CC* (1990) 60 P. & C.R. 464).

UNNECESSARY INCONVENIENCE. A right to pull down a house in such manner and time as not to cause “unnecessary inconvenience” (Metropolitan Building Act 1854 (c.122) s.85(3)) involved no obligation to protect the privacy of rooms exposed by the pulling down (*Thompson v Hill*, L.R. 5 C.P. 564).

See **DEMOLISH**; **TAKE DOWN**.

UNNECESSARY INTERFERENCE. Proviso, in a mining lease, that the working of the coal should “not be prevented or unnecessarily interfered with”: see *Munday v Rutland*, 23 Ch. D. 81.

UNNECESSARY MATERIAL. “66. ‘Unnecessary material’ was defined in clause 728(2) of the Company Law Reform Bill in the same terms as in section 1074(2) of the 2006 Act. The Explanatory Notes stated in relation to clause 728: ‘1311. This clause provides for cases where a delivered document contains unnecessary material (i.e. material for which there was no legal requirement) . . .’ It is unclear whether this explanation was intended to reflect clause 728(2)(a) (‘not necessary in order to comply with an obligation under any enactment’) alone, or clause 728(2)(b) (‘not specifically authorised to be delivered to the registrar’) as well. On the one hand, the phrase ‘legal requirement’ is more apt to refer to clause 728(2)(a) alone. On the other, the explanation appears to have been intended to refer to the entire clause. On either view, I consider that this explanation supports what I would in any event hold to be the meaning of section 1074(2)(a), namely that it relates to legal requirements alone. . . .

67. Accordingly, I consider that the issue of whether the requirement in section 1074(2)(a) is made out falls to be determined on an entirely objective basis, by reference to legislation, and that the Applicant’s perception of whether or not material ‘is necessary in order to comply with an obligation under any enactment’ has nothing to do with that issue. . . .

72. Mr Margolin submitted that to interpret section 1074 as meaning that anything that is not required or authorised by legislation to be included in a document is

UNNECESSARY

'unnecessary material' would produce a surprising result. I disagree. I consider that it would be more surprising if the content of "unnecessary material" depended on the extent to which a person had been "specifically authorised" to include that material in documents.

73. Mr Margolin also submitted that to interpret section 1074(b) as referring to what is not specifically authorised by legislation means that it adds nothing to section 1074(a). I do not agree with this either. Section 1074(a) refers to the requirements of legislation, whereas section 1074(b) refers to what is authorised by legislation, which is different." (*The Registrar of Companies v Swarbrick (Administrators of Gardenprime Ltd)* [2014] EWHC 1466 (Ch).)

UNNECESSARY OBSTRUCTION. A car left in the road so as to cause an obstruction is not an "unnecessary obstruction" within the meaning of reg.95 of the Motor Vehicles (Construction and Use) Regulations 1969 (SI 1969/321) (Motor Vehicles (Construction and Use) Regulations 1973 (SI 1973/24) reg.114) if it is only left for a reasonable time. In this case from 2.45 p.m. to four pm was considered reasonable (*Evans v Barker* [1971] R.T.R. 453). Obstruction of a road by the car of a doctor on an emergency call was held to be an "unnecessary obstruction" within the meaning of reg.114 (*Wade v Grange* [1977] R.T.R. 417).

UNNECESSARY PROCEEDING. See IMPROPER.

UNNECESSARY RISK. The duty of an employer to guard an employee against unnecessary risk is a duty not to subject the employee to any risk which the employer can reasonably foresee, and which he can guard against by any measures, the convenience and expense of which are not entirely disproportionate to the risk involved (*Harris v Brights Asphalt Contractors* [1953] Q.B. 617).

UNOCCUPIED. "Unoccupied" (Public Health Act 1875 (c.55) s.211(2)): see *Southend-on-Sea v White*, 83 L.T. 408 and *Gaze v Wren*, 87 L.T. 27, cited OCCUPATION.

A house provided by the church for its minister does not become "unoccupied" within the meaning of s.17 of the General Rate Act 1967 (c.9) if it remains empty for a year between appointments of ministers (*Bexley Congregational Church Treasurer v London Borough of Bexley* [1971] 3 All E.R. 289).

"Unoccupied land" (Caravan Sites Act 1968 (c.52) s.10(1)(b)). Land on which a gipsy stationed a caravan with the landowner's permission was not "unoccupied" for the purposes of this section (*R. v Beaconsfield Justices, Ex p. Stubbings* (1987) 85 L.G.R. 821).

UNPAID. A covenant to pay interest at a certain rate so long as the principal secured or any part of it remains "unpaid", does not exclusively mean payment in cash; "unpaid", in that connection, means due under the covenant; and when a judgment has been obtained for the principal, the covenant merges in the judgment and the principal is no longer "unpaid" under the covenant (*Ex p. Fewings, Re Sneyd*, 25 Ch. D. 338). See hereon MERGER; *Economic Life Assurance v Usborne* [1902] A.C. 152, cited UNTIL.

See PAYMENT.

UNPAID SELLER. As to "unpaid seller", in s.44 of the Sale of Goods Act 1893 (c.71), see *Mordaunt v British Oil & Cake Mills* [1910] 2 K.B. 502, cited ABSENT. Stat. Def., Sale of Goods Act 1979 (c.54) s.38.

UNPROFITABLE CONTRACT. “A contract is not an ‘unprofitable contract’ in this context merely because it is financial disadvantageous or merely because the company could have made or could make a better bargain.” (*Re SSSL Realisations (2002) Ltd* [2006] EWCA Civ 7.)

UNQUALIFIED. See INFAMOUS CONDUCT; MEDICAL; see further *Davies v Makuna*, 29 Ch. D. 596; PRACTISE; QUALIFIED; SOLICITOR; WILFULLY AND FALSELY.

“Unqualified person” (Solicitors Act 1957 (c.27) s.18). The rule that no unqualified person shall act as a solicitor applies to an individual, not to a firm. The fact that one partner allowed his practising certificate to lapse, thereby dissolving the partnership by virtue of s.34 of the Partnership Act 1890 (c.39), did not mean that the firm, or the other partners, became “unqualified persons” within the meaning of this section (*Hudgell Yeats & Co v Watson* [1978] Q.B. 451).

UNQUOTED COMPANY. Stat. Def., “a company none of whose shares, stocks, debentures or other securities are marketed to the general public” (Income Tax Act 2007 s.184(2)).

UNREASONABLE. Where a statute gives justices power to determine whether proposed works by a local authority are “unreasonable”, they have power to determine that the works ought not to be done at all, as well as to control the mode of doing works which they do not condemn (*Sheffield v Alexander*, 63 L.J.M.C. 206; see further *Mansfield v Butterworth* [1898] 2 Q.B. 274, cited INSUFFICIENT). Cp. APPORTION.

It is not “unreasonable” of a local authority in giving permission for the opening on Sunday of a cinema to attach a condition prohibiting the admission of children under the age of 15 (*Associated Provincial Picture Houses v Wednesbury Corp* [1948] Ch. 223).

“Unreasonable” (Private Street Works Act 1892 (c.57) s.7(d)) means “unreasonable” on any ground other than insufficiency, coupled possibly with the further exception of unreasonableness on the ground of undue expenditure (*Southgate BC v Park Estates (Southgate)* [1954] 1 Q.B. 359).

“Unreasonable in character or extent” (Housing Act 1964 (c.56) s.27(2)(b)). A notice requiring the landlord to build a bathroom by way of an extension was not a request to do work “unreasonable in character or extent” (*Harrington v Croydon Corp* [1968] 1 Q.B. 856).

“Unreasonable... in the particular circumstances of the case” (Legal Aid and Advice Act 1949 (c.51) s.1(6)). In deciding whether it is reasonable to pursue interlocutory proceedings, a legal aid committee can properly take into account the prospects of success in the action as a whole (*R. v Legal Aid Committee No.1 (London) Legal Aid Area, Ex p. Rondel* [1967] 2 Q.B. 482).

It was held not to be “unreasonable” within the meaning of the Animals Act 1971 (c.22) s.5(3)(b) to allow a guard dog to roam freely on securely enclosed premises, but see now the Guard Dogs Act 1975 (c.50) (*Cummings v Grainger* [1977] Q.B. 397).

(Supreme Court Act 1981 (c.54) s.51(7).) The issue of a writ without a letter before action to set aside an award of libel damages on the grounds that it had been obtained by fraud, where the pleading had been signed by both leading and junior counsel, could be unreasonable conduct to justify a wasted costs’ order against the solicitor even though they acted free of charge (*Count Tolstoy-Miloslavsky v Lord Aldington* [1997] 2 All E.R. 556).

UNREASONABLE CONDUCT. Where the Registrar of Restrictive Trading Agreements did not admit the claim of the registered supplies that improperly fitted

UNREASONABLE

goods have a medically detrimental effect on users, and as a result suppliers adduced medical evidence which was substantially uncontradicted, the Registrar was guilty of “unreasonable conduct” within r.76 of the Restrictive Practices Court Rules 1957 (No.603) (*Re Footwear Reference (No.2)* [1968] 1 W.L.R. 1355).

“Unreasonable conduct” (Industrial Court Rules 1971 (SI 1976/1777) (L. 36) r.69). Employers, who should have seen that there was sufficient evidence to support the verdict of an industrial tribunal, and who appealed against that verdict on the grounds that there was insufficient evidence to support it, and who subsequently withdrew their appeal, were guilty of unreasonable behaviour within the meaning of this rule (*J. & H. Smith v Smith* [1974] I.C.R. 156).

“Unreasonable conduct in conducting the proceedings” (Employment Appeal Tribunal Rules 1976 (1976/322) r.21(1)). A party’s failure to attend the hearing of an appeal to an appeal tribunal was held to be “unreasonable conduct in conducting the proceedings” within the meaning of this rule (*Croydon v Greenham (Plant Hire)* [1978] I.C.R. 415).

UNREASONABLE DELAY. “Unreasonable delay” (s.31 of the Matrimonial Causes Act 1857 (20 & 21 Vict., c.85)); see *Beauclerk v Beauclerk* [1891] P. 189; [1895] P. 220; *Brougham v Brougham* [1895] P. 288; *Johnson v Johnson* [1901] P. 193. The phrase here meant culpable delay, something in the nature of acquiescence (*Lowe v Lowe* [1952] P. 376). See also *McLeish v McLeish* [1950] V.L.R. 280.

UNREASONABLE PREFERENCE. See **UNDUE PREFERENCE.**

UNREASONABLY.

“Unreasonably refuse”: a mine-owner who insisted that a mining lease should contain a covenant to work diligently should not “unreasonably refuse” to grant it within s.4 of the Mines (Working Facilities and Support) Act 1923 (c.20) (*Glassbrook Brothers Ltd v Leyson* [1933] 2 K.B. 91).

(Settled Land Act 1925 (c.18) s.24.) For an example of a bankrupt tenant for life unreasonably refusing, within the section, to exercise his Settled Land Act powers, see *Re Thornhill’s Settlement* [1941] Ch. 24.

“Unreasonably refuses or neglects” (National Insurance Act 1911 (c.55) s.11(2)); see *Rushton v Skey & Co Ltd* [1914] 3 K.B. 706.

“Unreasonably refused” (Redundancy Payments Act 1965 (c.62) s.2(4)); see *Taylor v Kent CC* [1969] 2 Q.B. 560; *Collier v Smiths Dock Co* [1969] 2 Lloyd’s Rep. 222; *Morganite Crucible Co v Street* [1972] 1 W.L.R. 918, cited **SUITABLE**.

A local education authority is not necessarily “proposing to act unreasonably” within the meaning of the Education Act 1944 (c.31) s.68 (as amended) just because the Secretary of State disagrees with the proposals (*Secretary of State for Education and Science v Tameside Metropolitan BC* [1977] A.C. 1014).

“Unreasonably objects” (Mental Health Act 1959 (c.72) s.52(3)(c)). In determining whether the nearest relative has acted ‘unreasonably’ within the meaning of this section the proper test is not what that relative, but what a reasonable person in that relative’s place, would do in all the circumstances (*W. v L. (Mental Health Patient)* [1974] Q.B. 711).

“Unreasonably refused to provide a written statement” (Employment Protection Act 1975 (c.71) s.70(4)); see **REFUSE**.

The Court of Appeal reviewed at length the authorities on whether a landlord’s refusal to permit the assignment of a lease was or was not unreasonable in those cases where the lessee had covenanted not to assign without licence, such licence “not to be

unreasonably withheld". A number of propositions of law were deduced. In this case the withholding of consent was held to be unreasonable because of the disproportionate harm to the tenant compared to the minimum disadvantage suffered by the diminution in the value of the landlord's reversion (*International Drilling Fluids v Louisville Investments (Uxbridge)* [1986] Ch. 513). In refusing consent to the underletting of two floors of a house let to a tenant on a long lease, on the grounds that, if the tenant moved out before the end of the lease, the underleases would acquire protection under the Rent Acts, the landlord had acted "unreasonably" (*Deverall v Wyndham* [1989] 1 E.G. 70). The landlord's consent to an assignment had been reasonably withheld in a case where the tenant had not complied with a repairing covenant, where the house was in a ruinous condition, and where the proposed assignee would not agree to a timetable to carry out the works or provide the landlord with financial security for doing so (*Orlando Investments v Grosvenor Estate Belgravia* [1989] 43 E.G. 175). A landlord who had failed for nearly three months to respond to the tenant's request for licence to assign, and had then delayed further, was held to have unreasonably withheld his consent (*Midland Bank v Chart Enterprises* [1990] 44 E.G. 68).

"Is withholding his agreement unreasonably" (Adoption Act 1976 (c.36) s.16(2)(b)). Where the natural parents of a child, with whom they had had no contact, and after whom they were incapable of looking, refused to consent to the foster parents' application for adoption on the grounds that a custodianship order would suffice to secure the child's welfare and should satisfy the foster parents, it was held that the consent had been "unreasonably withheld" (*Re M. (a Minor)* [1987] 1 W.L.R. 162). In similar circumstances it has been held that the parents had "unreasonably withheld" consent to adoption by the foster parents (*Re L. (a Minor)* (1990) 20 Fam. Law 98). A sense of grievance that a local authority had not attempted to rehabilitate a child with his mother was a factor to be considered in deciding whether the mother had "unreasonably" withheld her consent to the adoption of the child (*Re B. (a Minor) (Adoption: Parental Agreement)* [1990] 2 F.L.R. 383). Again, in a case where the mother, who had done all she could to preserve contact with her two children taken into care, had a feeling of injustice because the local authority had changed its plans for the children and her access application had been adjourned, it was held that she had not withheld her consent to adoption "unreasonably" (*Re E. (Minors) (Adoption: Parental Agreement)* [1990] 2 F.L.R. 397). A parent's refusal of consent to adoption did not become "unreasonable" by virtue of delay which could not be attributed to him (*Re C. (Minors) (Adoption)* [1992] 1 F.L.R. 115).

"Consent was unreasonably withheld" (Landlord and Tenant Act 1954 (c.56) s.53). In determining whether, for the purposes of this section, a landlord's consent to a change of use was "unreasonably refused" the court should first seek to ascertain the reason on which the landlord had acted, and then consider whether, objectively, refusal for that reason was reasonable (*Tollbench v Plymouth City Council* [1988] 23 E.G. 132).

On an appeal by a freeholder to an arbitrator against the refusal, by the managers of a scheme approved by the court under s.19 of the Leasehold Reform Act 1967 (c.88), of consent to a proposed development, such consent being subject to a proviso that it "shall not be unreasonably withheld", it was for the freeholder to show that the refusal was one at which no body of managers, acting reasonably, could have arrived (*Estates Governors of Alleyn's College v Williams*, *The Times*, January 21, 1994).

UNREGISTERED

“Membership . . . unreasonably refused” (Employment Act 1980 (c.42) s.4(2)(a)). In a case where there was an agreement that an employer would employ only members of a particular branch of a trade union, it was held that the refusal of the trade union to permit an employee, who was an established member of the union, to transfer from one branch of the union to the authorised branch was unreasonable (*Transport and General Workers Union v Tucker*, *The Times*, March 2, 1988).

“Costs . . . incurred unreasonably or improperly” (R.S.C. Ord.62 r.11). What was reasonable or unreasonable depended on the circumstances of each case. But it would seem that the principles requiring gross misconduct laid down in the older authorities were not applicable to an application under this modern rule (*Sinclair-Jones v Kay* [1988] 2 All E.R. 611).

“Acting unreasonably” (Insolvency Act 1986 (c.45) s.125(2)). A petitioner was held not to have acted “unreasonably” in seeking to have the company wound up in order to realise his shareholding, instead of exercising his rights relating to the purchase of his shares by other members of the company pursuant to a provision in the company’s articles; nor had it been unreasonable of him to refuse an offer by the other members to buy his shares according to a provision in the articles (*Re Abbey Leisure* [1990] B.C.C. 60). The reasonableness of a decision to withhold consent to an assignment must be judged, for the purposes of the Landlord Tenant Act 1988 (c.26) s.1(3)(a) by reference to circumstances existing and known to the landlord when he made the decision (*CIN Properties v Gill* [1993] 38 E.G. 152). It was held that landlords were acting reasonably in withholding consent to the assignment of a lease where they would suffer severe financial loss should the assignment take place (*Olympia & York Canary Wharf v Oil Property Investment* [1993] N.P.C. 108).

See ASSIGN; RESPONSIBLE; UNDERLEASE. Cp. REASONABLY; ARBITRARILY.

UNREGISTERED COMPANY. “Unregistered company” (s. 199 of the Companies Act 1862 (c.89)): see *Re Torquay Bath Co*, 32 Bea. 581; *Bowes v Hope Insurance*, 11 H.L. Cas. 389; *Re London Indiarubber Co*, 1 Ch. 329; *Re Bank of London*, 6 Ch. 421; Buckl. (12th edn), 722, (etc.); **JOINT STOCK COMPANY.** See also *R. v Tankard* [1894] 1 Q.B. 548.

A friendly society which has not been registered under the Friendly Society’s Acts or any other Acts, may be compulsorily wound up by the court as an unregistered company under ss.267 and 268 of the Companies (Consolidation) Act 1908 (c.69) (see Companies Act 1948 (c.38) s.398): see *Re Victoria Society, Knottingley* [1913] 1 Ch. 167.

(Insolvency Act 1986 (c.45) s.220.) A football and social club which, in addition to providing various social amenities for its members, also promoted professional association football and provided benefits for non-members, was not an “unregistered company” within the meaning of this section (*Western Counties Construction v Witney Town Football and Social Club*, *The Times*, November 19, 1993). See ASSOCIATION.

Stat. Def., Insolvency Act 1986 (c.45) s.223.

UNRELIABLE. “Render unreliable any confession” (Police and Criminal Evidence Act 1984 (c.60) s.76(2)(b)). “Unreliable” means “cannot be relied on as being the truth”, and whether or not a drug addict undergoing withdrawal was fit to be interviewed in the sense that his answers could be relied upon was a matter for those present at the time (*R. v Crampton* (1991) 92 Cr.App.R. 369). See also SAID.

UNREPRESENTED CAPITAL. See CAPITAL.

UNRESTRICTED. The right to close parts of land, to exclude the public from it and to charge for admission is not inconsistent with the “free and unrestricted use” of the land by the public (*Burnell v Downham Market Urban DC* [1952] 2 Q.B. 55).

UNROADWORTHY. See UNSAFE.

UNSAFE. “Port ‘unsafe’ in consequence of war, disturbance, or any other cause” in an exception clause in a bill of lading “does not mean unsafe at the moment, but means unsafe for a period which would involve inordinate delay” (per Loreburn C.); and “or any other cause” is to be read as ejusdem generis with the preceding words: see *Knutsford SS v Tillmanns* [1908] A.C. 406, cited INACCESSIBLE. See SAFE PORT.

“Unsafe or unroadworthy condition”: a vehicle which is unsafe is unroadworthy and vice versa. “Unroadworthy” implies the same state in relation to a road vehicle as “unseaworthy” does to a vessel (*Barrett v London General Insurance Co* [1935] 1 K.B. 238).

An exemption clause in a car insurance policy providing that the insurers would not be liable while the car was being driven in an “unsafe or unroadworthy condition” was held not to apply to a car which was overloaded (*Clarke v National Insurance and Guarantee Corp Ltd* [1963] 2 W.L.R. 1396).

“Conviction . . . unsafe or unsatisfactory” (Criminal Appeal Act 1968 (c.19) s.2(1)). The words “unsafe” and “unsatisfactory”, for the purposes of this section, are disjunctive and do not have different meanings from each other (*R. v McKenny* (1991) 141 New L.J. 456).

Section 2(1) of the Criminal Appeal Act 1995 requires the Court of Appeal to allow an appeal against a conviction if they think the conviction is unsafe. The House of Lords decided that “unsafe” is to be allowed to have an ordinary meaning and that “it is undesirable that exercise of the important judgment entrusted to the Court of Appeal . . . should be constrained by words not to be found in the statute and that adherence to a particular thought process should be required by judicial decision” (*R. v Pendleton* [2002] 1 W.L.R. 72 at para.19, HL per Lord Bingham of Cornhill).

A conviction under a provision that offended against art.6 of the Human Rights Convention would be unsafe within the meaning of s.2(1) of the Criminal Appeal Act 1968 (*R. v Kearns* [2002] 1 W.L.R. 2815, CA). But note *R. v Lyons* [2002] 4 All E.R. 1028, HL emphasising that whether a conviction is unsafe is a matter of English law.

A decision of a tribunal could in theory be unsafe as a result of an unreasonable delay in promulgation (*Bangs v Connex South Eastern Ltd* [2005] EWCA Civ 14).

“Unsafe ship”: Stat. Def., Merchant Shipping Act 1894 (c.60) s.459(1).

See SAFE.

UNSATISFIED. “Unsatisfied judgment” (s.98 of the County Courts Act 1846 (c.95)): see *Abley v Dale*, 20 L.J.C.P. 233; *Cookman v Rose*, 3 Jur. N.S. 866.

“Judgment still unsatisfied”, in County Court Rules 1903–1904 Ord.26 r.1: see *White v Stenning* [1911] 2 K.B. 418.

UNSEAWORTHY. “Unseaworthy”, in a contract of carriage: see *Becker, Gray & Co v London Assurance Corp* [1918] A.C. 101.

“Unseaworthy”, in a marine insurance policy: see *Fireman’s Fund Insurance Co v Western Australia Insurance Co Ltd*, 43 T.L.R. 680.

“Unseaworthiness”: see *Werner v Bergensk Dampskibsselskab*, 42 T.L.R. 265; *Rio Tinto Co Ltd v Seed Shipping Co Ltd*, 42 T.L.R. 381; *The Carron Park*, 15 P. 203 (open valve); *Dobell & Co v Steamship Rossmore Co Ltd* [1895] 2 Q.B. 408 (defective porthole); *McFadden v Blue Star Line* [1905] 1 K.B. 697 (defective valve); *The*

UNSECURED

Diamond [1906] P. 282 (danger of fire from stove); *The Schwan* [1909] A.C. 450 (defective cock); *Virginia Carolina Chemical Co v Norfolk and North American Steam Shipping Co* [1912] 1 K.B. 229 (inadequate protection against fire); *Fiumana Docieta Di Navigazione v Burge & Co Ltd* [1930] 2 K.B. 47 (defective bunker coal).

“To satisfy the definition of unseaworthiness it must exist at the commencement of the voyage. It must, however, still be in effective operation at the time of the casualty, and from its very nature it must always, or almost always, operate by means of and along with the specific immediate peril. That is because the essence of unseaworthiness as a cause of loss or damage is that the unseaworthy ship is unfit to meet the peril” (per Lord Wright, *Monarch Steamship Co v A/B Karlshamns Oljefabriker* [1949] A.C. 196 at 226).

See SEAWORTHY.

UNSECURED. “Unsecured debts provable”: see *Re E. A. B.* [1902] 1 K.B. 457, cited DEBT.

UNSECURED DEBTS. For the purposes of s.176A(2) of the Insolvency Act 1986, “unsecured debts” does not include the unsecured debts of secured creditors (*Re Airbase Services (UK) Ltd* [2008] EWHC 124 (Ch)).

UNSERVED. An oral statement that heifers were “unserved” was held to override a written condition exempting a vendor from liability for errors of description (*Couchman v Hill* [1947] K.B. 554).

UNSHIPPING. Merely hiring in England a vessel to carry smuggled goods to Ireland where they were unshipped; held, “not assisting or being otherwise concerned in the unshipping” of the goods, within s.45 of the Customs Act 1825 (c.108) (*Att-Gen v Kenifeck*, 6 L.J. Ex. 214). See further CONCERNED IN.

“Shipping and unshipping of goods” (Harbours, Docks and Piers Clauses Act 1847 (c.27) s.33). The owners of tugs which bring in and take out vessels engaged in the shipping and unshipping of goods are themselves so engaged within the meaning of this section and cannot therefore be excluded from bringing vessels into a dock on the Humber (*JH Pigott & Son v Docks and Inland Waterways Executive* [1953] 1 Q.B. 338).

See TO SHIP.

UNSOLICITED. Stat. Def., Unsolicited Goods and Services Act 1971 (c.30) s.6.

UNSOUND MIND. “Unsound mind”, or *insanæ memoriae*, which all persons must understand to be a depravity of reason, or want of it” (per Hardwicke C., *Barnsley’s Case*, 2 Eq. Ca. Ab. 580). Mere eccentricity is not such an unsoundness of mind as will amount to testamentary incapacity (*Pilkington v Gray* [1899] A.C. 401). “There is an important difference between ‘unsoundness of mind’ and ‘dullness of intellect’... Unsoundness of mind may arise from perversion of the mental powers, and may exhibit itself by means of delusions or strong antipathies, which is called ‘mania’; or it may arise from what may be termed a defect of mind, as where the mind was originally incapable of directing itself to anything requiring judgment, which is ‘idiotcy’; or where a mind, originally strong, has become weakened by illness or age though producing no such insanity as to amount to mania”. Idiotcy, “in general, is very easily proved. It is manifested in a variety of ways—by impropriety or indecency of conduct, dirtiness in the habits, or by vacancy of aspect, though this last test can only be appreciated by those who have seen the party. Another test is by means of numbers, i.e. by showing that the party cannot understand the commonest rules of arithmetic” (per Wood V.C., *Harrod v Harrow*, 23 L.T.O.S. 243). See IDIOT. See further *Hope v*

Campbell [1899] A.C. 1; Mental Deficiency Act 1927 (c.33) s.1. By s.20(5) of the Mental Treatment Act 1930 (c.23), the phrase "person of unsound mind" is to be substituted for the word lunatic.

"Person of unsound mind" (Mental Treatment Act 1930 (c.23) s.20(5)) has the same meaning as "lunatic" in the earlier Acts and is something more radical than an emotional disturbance requiring psychiatric treatment (*Re Buxton v Jayne* [1960] 1 W.L.R. 783).

Person of unsound mind (Trustee Act 1850 (c.60) s.2) included an apoplectic person whose mind was thereby weakened (*Re Critchley*, 83 L.T. 167), or one incapacitated by old age, or by infirmity of mind, e.g. from paralysis (*Re Martin*, 34 Ch. D. 618, overruling *Re Phelps*, 31 Ch. D. 351), but the paralysis had to be such as to produce mental infirmity (*Re Barber*, 39 Ch. D. 187). See LUNATIC; cp. INABILITY; UNFIT.

The power which by the old Divorce Court Rules r.196 was given to the Registrar of assigning a guardian *ad litem* to a person of "unsound mind" could only be exercised in the case of a lunatic so found by inquisition (*Fry v Fry*, 34 S.J. 250). See Matrimonial Causes Rules 1968 (SI 1968/219) r.1739, where "patient" is used instead of "person of unsound mind".

"Incurably of unsound mind" (Matrimonial Causes Act 1950 (c.25) s.1(1)(d); Matrimonial Causes Act 1965 (c.72) s.1(1)(a)(iv)). A spouse is "incurably of unsound mind" if he or she is of such mental incapacity as to make normal married life impossible and there is no prospect of any improvement in mental health which would make this possible in future (*Whysall v Whysall* [1959] 3 W.L.R. 592). "Unsound mind" in these sections covers a person who is congenitally and incurably feeble-minded or mentally subnormal so as to be incapable of managing himself and his affairs (*Robinson v Robinson* [1965] P. 192). It does not cover a mental defective, that is one in a state of arrested or incomplete development of mind (*Woolley v Woolley (By her Guardian)* [1968] P. 29).

"Unsound mind" (Matrimonial Causes Act 1965 (c.72) s.9(1)(b)(i)) means the same as "insanity" in s.9(1)(b)(iii) (*Bennett v Bennett* [1969] 1 W.L.R. 430).

The unsoundness of mind which by s.31(2) of the Limitation Act 1939 (c.21), as amended by the Law Reform (Limitation of Actions, etc.) Act 1954 (c.36) extends the three year limitation period for personal injury actions, is similar to that described in R.S.C. Ord.80 r.1, a condition making it impossible for the plaintiff to manage his own affairs (*Kirby v Leather* [1965] 2 Q.B. 367).

UNSOUNDNESS. See SOUND.

UNSTAMPED. See STAMPED.

UNSUITABLE. A trailer which was ordinarily suitable for the load it was carrying did not become "unsuitable" within the meaning of the Road Vehicle (Construction and Use) Regulations 1986 (SI 1986/1078) r.100(3) merely because it had been badly loaded (*Young v DPP* (1991) 155 J.P.N. 506).

(Education Act 1944 (c.31) s.55(1).) The fact that a pupil had been selected for one school did not render another school closer to the pupil's home and which catered for her abilities "unsuitable" so as to render the local authority obliged to pay for free transport (*R. v Kent CC, Ex p. C* [1998] E.L.R. 108).

UNTIL. This word may be read either as inclusive or exclusive (*R. v Stevens*, 5 East, 244, below; cp. FROM); it is generally inclusive.

In a memorandum enlarging the time within which an award may be made, "until" will generally include the whole of the day named (Russ. on Arb. (8th edn), 102, citing

Kerr v Jeston, 1 Dowl. N.S. 538; *Knox v Simmonds*, 3 Bro. C.C. 358; see further *Pugh v Leeds*, 2 Cowp. 714). So, it seems that, as a general rule, the word "till" is inclusive of the day to which it is prefixed; so that where a defendant was given "till" a certain day to plead, judgment signed on such day for want of a plea was bad, as the defendant might have delivered a plea during such day (*Dakins v Wagner*, 3 Dowl. 535; see also *Kerr v Jeston*, above) And the rule is the same in the case of the word "until" (*Isaacs v Royal Insurance*, L.R. 5 Ex. 296). So, where a bankrupt was protected from process "until the 29th July", that protection extended during the whole of that day (*Bellhouse v Mellor*, 28 L.J. Ex. 141).

But a plaintiff having obtained a judgment, but with a stay of execution "until" a stated day, was held (in Ireland) entitled to issue his execution on that day if the money was not then paid (*Rogers v Davis*, 8 Ir. L.R. 399), in that case Burton J., said, "I think 'until' does not mean 'after'". So, in the time of Charles II, it was held that a release of all trespasses or of all demands "until" a stated date, did not include the day of that date (*Nichols v Ramsel*, 2 Mod. 280). See further *Wicker v Norris*, Ca. t. Hard. 116.

In an indictment, "until" is either inclusive or exclusive of the day to which it is applied according to the context and subject-matter (*R. v Stevens*, 5 East, 244).

In a lease "until Michaelmas", that feast day is included (3 Leon. 211).

A mortgage of property "until" the mortgage debt and agreed interest are paid, remains effective although the personal covenant to pay may be merged in a judgment; therefore, even after a judgment for the debt, the agreed interest remains secured on the property (per Lord Davey, *Economic Life Assurance v Usborne* [1902] A.C. 152, cited MERGER). Cp. UNPAID.

In a trust in favour of a wife to operate after her husband's death "until she shall marry again", the words quoted were held to be words of futurity and not to apply where the wife, after being divorced from her husband, remarried in his lifetime (*Re Monro's Settlement* [1933] Ch. 82).

In wills, the word "until" is in general coupled with a condition or contingency indicating that some change is intended in the disposition of the property, which up to that time, is given in a particular way. This, however, will not always be the effect of it. Thus, where there was a gift to A for life, remainder to her children, "until" they should attain 25, then for such children so attaining 25, with a gift over; it was held that A's children took vested interests at birth, and that the gift over was void for remoteness (*Hardcastle v Hardcastle*, 1 H. & M. 405; see *Bland v Williams*, 3 L.J. Ch. 218). Under a devise to A, not to be of age to receive it "until" he attain a particular age, A takes a vested interest subject to being divested on his dying under that age (*Snow v Poulden*, 1 Keen, 186).

"Until he shall assign or charge or affect to assign or charge": see *Re Marshall* [1920] 1 Ch. 284.

"Until she shall take the veil": see *Re Hewitt* [1926] 1 Ch. 740.

"Until she shall marry": see *Re Mason* [1910] 1 Ch. 695, cited UNMARRIED.

"Until the happening of any event whereupon the same if given absolutely... would no longer be received": see *Re Levinstein* [1921] 2 Ch. 251.

"Until the said intended marriage": see *Re Wombwell's Settlement* [1922] 2 Ch. 298.

"Until some event shall happen whereby the said income if belonging to him would become vested or charged in some other person or persons or corporation": see *Re Chamberlaine's Settlement* [1922] 2 Ch. 850.

As to the value of "until" in a limitation working a forfeiture on alienation, see per Chitty J., *Dean v Dean* [1891] 3 Ch. 155, but see on this case 36 S.J. 181; see hereon *Brandon v Robinson*, 18 Ves. 429. In that connection "until", like "shall become", has generally a past as well as a future application, e.g. gift to A for life, then to B, during A's life, commits the act; thereby forfeiture is worked before B's estate begins (*Sharp v Cosserat*, 20 Bea. 470). See QUOUSQUE; TO.

"Until after the completion of the works", in condition 32 of the form of contract issued by the Royal Institute of British Architects: see *Smith v Martin* [1925] 1 K.B. 745.

"Until on board steamer": for the meaning of these words in an insurance policy, see *Ewing & Co v Sickelmore*, 34 T.L.R. 501.

Repair to road "until taken over by the local authority": see *Skinner v Hunt* [1904] 2 K.B. 452, cited REPAIR.

"Until warning has been given by persons in charge to persons employed whose safety is likely to be endangered", in reg.163 of the Coal Mines Act 1911 (c.50): see *Harrison v Wythemoor Colliery Co Ltd* [1922] 2 K.B. 674.

Provisional "until a fully legalised agreement" is signed, "until" is not the right word to import a condition or a stipulation as to the event referred to (*Branca v Cobarro* [1947] K.B. 854). See also PROVISIONAL.

Extension of cover on a marine insurance policy "until" a specified date is inclusive of that date (*The Kiel* [1991] 2 Lloyd's Rep. 546).

UNTIL FURTHER ORDER. Where an interim injunction is granted over a certain day "or until further order", the injunction is not continued after the day named "until further order", but may be stayed by order, before the day named (*Bolton v London School Board*, 7 Ch. D. 766). Injunction "until defence or further order", semble, remains in force until discharged by order, though defence be delivered (*Ooddeen v Oakley*, 2 D.G.F. & J. 158).

An order, in an administration action, to pay an annuity "until further order" is, notwithstanding the latter phrase, *res judicata*, for purposes of appeal (*Peareth v Marriott*, 22 Ch. D. 182).

An authority to make periodical payments "until further order" is an absolute assignment.

UNTO. See TO; TOWARDS.

"Unto and among": see AMONG.

To deliver a notice "unto" a person: see SERVED.

UNTRUE. A misleading statement in a prospectus was "untrue" within s.3(1)(a) of the Directors Liability Act 1890 (c.64), even though it was true in the sense in which it was used by those who issued the prospectus (*Greenwood v Leather Shod Wheel Co* [1900] 1 Ch. 421); and a statement which was untrue in fact was none the less "untrue" within this section because made on the best advice obtainable and in perfect good faith and with the fullest intention and desire to omit nothing that ought to be disclosed (*Shepherd v Broome* [1904] A.C. 342). See further *McConnell v Wright* [1903] 1 Ch. 546, cited ACQUIRE. Cp. *Twycross v Grant*, 2 C.P.D. 469, cited KNOWINGLY, the principles of the cases mentioned in the notes thereon being, semble, applicable to "untrue", see Companies Act 1985 (c.6) s.71(a); *Adams v Thrift* [1915] 2 Ch. 21.

So, to "untruly declare" one's income, in a claim of exemption from tax (Income Tax Act 1918 (c.40) s.30), was to make a positive statement as to the income which, in

UNTRUSTWORTHY

some material respect, was untrue in fact, although it might not be fraudulent but only inexcusably careless (per Stormonth Darling L.O., *Lord Advocate v M'Laren*, 42 Sc. L.R. 762, cited CHARGEABLE).

See CORRECT; TRUE.

UNTRUSTWORTHY. As to how far, if at all, this word is defamatory, see *Mathieson v Scottish Trade Protection Society*, 5 Sc. L.T. 291.

UNUSUAL. A thing which is unusual is not, necessarily, extraordinary (see *Hill v Thomas* [1893] 2 Q.B. 333, cited EXTRAORDINARY TRAFFIC).

“Unusual danger”: the rule in *Indermaur v Dames*, L.R. 1 C.P. 274 is that an invitor is under a duty to prevent damage to an invitee from an “unusual danger”. “Unusual” here means such danger as is not usually found in carrying out the task or fulfilling the function which the invitee has in hand, though what is unusual will vary with the reasons for which the invitee enters the premises. A danger, either in relation to the person or the place, does not cease to be unusual because it has become familiar (*London Graving Dock v Horton* [1951] A.C. 737). See also *Jennings v Cole* [1949] 2 All E.R. 191; *Payne v British India Steam Navigation Co Ltd* [1947] S.A.S.R. 236; *London Graving Dock Co v Horton* [1951] A.C. 737.

“Unusual manner”: see *Edinburgh Water Trustees v Clippens Oil Co*, 35 Sc. L.R. 425, cited WILFUL DAMAGE.

See USUAL.

UNWANTED. (Sex Discrimination Act 1975 (c.65) ss.6(2)(b); EC Recommendation and Code of Practice on Measures to Combat Sexual Harrassment.) The word “unwanted” is essentially the same as “unwelcome” or “uninvited” (*Insitu Cleaning v Heads* [1995] I.R.L.R. 4).

UNWHOLESOME. A food imported for a particular purpose is not necessarily “unwholesome” within the meaning of reg.6(1)(c) of the Imported Food Regulations 1968 (SI 1968/97) just because it could be considered unwholesome if used for some other purpose. It has to be judged in the context of the specific use intended (*R. v Archer, Ex p. Barrow Lane & Ballard* (1983) 82 L.G.R. 361).

UNWILLING. Referring to the earlier cases on the ordinary clause in “conditions of sale” enabling a vendor to rescind the contract if he should be “unable or unwilling” to answer purchaser’s requirements, Turner L.J., said in *Duddell v Simpson* (2 Ch. 102), “These cases have settled, and I think very wisely settled, that the word ‘unwilling’, in a condition of sale of this description, is not to be considered as giving an arbitrary power to the vendor to annul the contract”. But though that passage was cited to Bacon V.C., in *Dames to Wood* (27 Ch. D. 177), he said, “The word ‘unwilling’ is as potent as the word ‘unable’. Nobody is entitled to ask why he is unwilling; if he refuses to comply with the requisition that is enough” (*Dames to Wood*, affirmed 29 Ch. D. 626; see further, judgments of Esher M.R. and Lindley L.J., *Terry to White*, 32 Ch. D. 14). The result seems to be that, though “unwilling” means “reasonably willing”, and does not justify a vendor in capriciously translating it into “I will not”, yet in rescinding the contract he is not bound to give his reason for his unwillingness to complete it, and the onus of proving his caprice or *mala fides* is on the purchaser (*Re Glenton and Saunders*, 53 L.T. 434; *Re Starr-Bowkett Society*, 42 Ch. D. 375; *Woolcott v Peggie*, 15 App. Cas. 42). See further WHATSOEVER. Cp. INSIST.

For an example of a vendor being “unreasonably unwilling” and acting arbitrarily, and therefore not entitled to rescind the contract, see *Quinion v Horne* [1906] 1 Ch.

596; see also *Re Jackson and Haden* [1905] 1 Ch. 603, and *Re Simpson and Moy*, 53 S.J. 376, both cited TITLE; *Merrett v Schuster* [1902] 2 Ch. 240; *Proctor v Pugh*, 127 L.T. 126. See LITIGATION.

Cp. WILLINGLY.

UNWORKABLE. See WORKABLE; WORTH THE EXPENSE.

UNWORTHY. To say, even of a peer, that “he is an unworthy man, and acts against law and reason”, is not actionable; for “in respect of God Almighty we are all unworthy, and the subsequent clause explains what unworthiness the defendant intended, for he infers him to be unworthy because he acts against law and reason”, which latter words are not actionable (per Scroggs J., *Townsend v Hughes*, 2 Mod. 159).

UP TO. A power for a lessee to determine a lease on notice provided that the lessee’s covenants are performed “up to the time of such determination”, is validly exercised if the covenants are performed at the date of expiry of the notice, although they are not performed at the date of the notice (*Simmons v Associated Furnishers Ltd* [1931] 1 Ch. 379).

“All assessed taxes . . . up to April 5 next before the date of the receiving order” (Bankruptcy Act 1914 (c.59) s.33(1)(a)): see *Re Pratt, Ex p. Inland Revenue Commissioners v Phillips* [1951] Ch. 225.

UPHOLD. A covenant to “repair, uphold, sustain, and maintain” premises, *semble*, is not enlarged by these italicised words, but is simply one to “repair” (*Lister v Lane* [1893] 2 Q.B. 212); but see *London v Great Western Railway* [1910] 2 Ch. 314, cited MAINTAIN. See further *Kennedy v Glasgow & South Western Railway*, 43 Sc. L.R. 31, cited MAINTAIN.

UPKEEP. A gift for the “upkeep” of a Baptist Chapel was a valid bequest (*Re Strickland’s Will Trusts* [1936] 3 All E.R. 1027).

Real estate was devised to trustees “without being answerable for upkeep”; this was held to be limited to physical upkeep (*Re Gerlach*, 2 L.M.D. 2237).

UPON. “‘Upon’; this word, in most cases, is used elliptically for ‘upon condition of’; as, ‘upon payment of costs’, ‘upon conviction of an offender’” (Dwar. (2nd edn), 692); or an appeal “upon” giving a prescribed notice (*R. v Lancashire Justices*, 27 L.J.M.C. 161).

It also means “by reason of”; as where one person becomes beneficially entitled to property “upon the death” of another (*Lord Advocate v Fleming* [1897] A.C. 145; *Lord Advocate v Seafield’s Trustees* (1955) S.L.T. (Notes) 12).

“The words ‘on’, or ‘upon’, it has been decided, may either mean ‘before’ the act done to which it relates, or ‘simultaneously with’ the act done, or ‘after’ the act done, according as reason and good sense require, with reference to the context and the subject-matter of the enactment” (per Denman C.J., *R. v Arkwright*, 12 Q.B. 970, citing *R. v Humphery*, 2 P. & D. 691, which last case, for same definition, was cited by Bovill C.J., *Paynter v James*, L.R. 2 C.P. 354). See also *R. v Stockton*, 7 Q.B. 520, cited IN AND FOR; per Coleridge J., *Scott v Parker*, 1 Q.B. 813.

In *R. v Humphery*, 2 P. & D. 691, “upon admission” to public corporate office a person to make a declaration (Sacramental Test Act 1828 (c.17) s.2) meant that the person could not be called on to declare until “after” admission. So, under s.10 of the Mayor’s Court of London Procedure Act 1857 (c. clvii), an appeal motion might be made “if upon the trial” the judge gave leave; this meant, at, or within a reasonable time “after”, the trial; and (in construing that Act) the majority of the court held that

two days (whilst Brett J. thought that four days) was such a reasonable time (*Folkard v Metropolitan Railway*, L.R. 8 C.P. 470); cp. AT. So, the power given (Infant Settlements Act 1854 (c.43) s.1) to make a settlement “upon” the marriage of an infant, meant “in the event of”, or “on the occasion of”, his or her marriage; and a post-nuptial settlement was thereby authorised (*Re Sampson and Wall*, 25 Ch. D. 482; *Re Phillips*, 34 Ch. D. 467; *Buckmaster v Buckmaster*, 35 Ch. D. 21; but see *Re Borrowes*, Ir. Rep. 2 Eq. 468, below); but semble, not if it was long after the marriage (*Re Leigh*, 40 Ch. D. 290; see CONTEMPLATION).

But a power to stop up paths “on notice being given” in the prescribed manner (Church Building Act 1819 (c.134) s.39), meant that the notice must be given “before” making the order (*R. v Arkwright*, above).

“Upon an information being laid” (Magistrates’ Courts Act 1952 (c.55) s.1(1)). “Upon” does not mean “immediately”, and a delay of six months, or even one year, before the issue of a summons did not contravene this section (*R. v Fairford Justices*, *Ex p. Brewster* [1976] Q.B. 600).

“Payment on delivery” means that both acts are to be done simultaneously (*Paynter v James*, L.R. 2 C.P. 348).

The sanction to continue directors’ powers, in a voluntary liquidation of a company, “upon” the appointment of liquidators (s.133(5) of the Companies Act 1862 (c.89)), need not be given once and for all immediately on such appointment, but may be given during the winding-up (*Re Fairbairn Co*, 63 L.J. Ch. 8). See Companies Act 1985 (c.6) s.580.

A power enabling the court to make an order vesting the legal estate in lands “upon” making an order appointing a new trustee, may be exercised prospectively (*Plomley v Richardson* [1894] A.C. 632; see further *Re Shortridge*, 64 L.J. Ch. 191).

A trust to invest “upon” ground rents authorises their purchase; “upon”, in such a connection, is not to be read as (or rather, is not to be confined to) “upon the security of” (*Re Mordan* [1905] 1 Ch. 515, cited INVEST). See Trustee Act 1925 (c.19) s.1.

“Upon the death or bankruptcy of any officer” in s.35 of the Friendly Societies Act 1896 (c.25); see *Re Eilbeck* [1910] 1 K.B. 136, cited PREFERENCE.

“Upon any representation or assurance” (Statute of Frauds Amendment Act 1828 (c.14) s.6); see *Haslock v Fergusson*, 7 A. & E. 94; *Pearson v Seligman*, 48 L.T. 842.

Entitlement to commission “upon your introducing a purchaser” does not signify the time when an agent becomes entitled to commission, but can only signify the services to be rendered by the agent (*Reed (Dennis) v Goody* [1950] 2 K.B. 277).

A conveyance securing an option to purchase before it is exercised is not a conveyance of property “upon the sale thereof” within the meaning of s.54 of the Stamp Act 1891 (c.34) (*Cory (Wm.) & Son v IRC* [1965] A.C. 1088).

Property which passes “on” death: see PASSING.

Vehicle passing “upon” a HIGHWAY: see PASSING.

Projection “over or upon” a payment: see PROJECTION.

See BUILT UPON; ON OR BEFORE; ON OR UPON; THEREUPON.

UPON CONDITION. See CONDITION.

UPON CONVICTION. See CONVICTION.

UPON THE MERITS. See MERITS.

UPON TRIAL. See SALE ON TRIAL.

UPON TRUST. No beneficial interest is taken if property be given or granted “upon trust”, though no trust be declared (*Lewin* (15th edn) 136, and cases there

cited). But “although the introduction of the words ‘upon trust’ may be strong evidence of the intention not to confer on the devisee a beneficial interest (*Hill v London* 1 Atk. 620; *Woollett v Harris* 5 Mad. 452), yet that construction may be negatived by the context, or the general scope of the instrument (*Dawson v Clarke* 18 Ves. 247 at 257; *Coningham v Mellish* Pr. Ch. 31; *Cook v Hutchinson* 1 Keen, 42; *Hughes v Evans* 13 Sim. 496); and in like manner the devisee may be designated as ‘trustee’, but the expression may be explained away, as for instance, if the term be used with reference to one only of two funds, the devisee may still establish his title to the beneficial interest in the other (*Batteley v Windle* 2 Bro. C.C. 31; *Pratt v Sladden* 14 Ves. 193; see also *Gibbs v Rumsey* 2 V. & B. 294). On the other hand, there may be a total absence of the word ‘trust’ or ‘trustee’ throughout the whole will, and yet the court may collect an intention that the devisee or legatee should be a trustee (*Saltmarsh v Barrett* 30 L.J. Ch. 853)” (Lewin (15th edn), 136). See further *Croome v Croome* 59 L.T. 582, affirmed 61 L.T. 814, distinguished in *Re West* [1900] 1 Ch. 84; *Re Foord* [1922] 2 Ch. 519.

“Upon such trusts as will best correspond with the uses, trusts and powers” (of settled realty). For the meaning of these words in a will in reference to heirlooms, see *Re Beresford-Hope* [1917] 1 Ch. 287.

See IN TRUST; TRUST; TRUSTEE.

UPON VIEW. See VIEW.

UPPER TRIBUNAL. Stat. Def., Tribunals, Courts and Enforcement Act 2007 s.3.

UPSET PRICE. A synonym for reserved price: see WITHOUT RESERVE.

UPSTREAM. “26. Nothing turns on the CJEU’s use of the words ‘upstream’ and ‘downstream’. *Bonik* may have been among the first cases in which the CJEU used these actual terms but, in *Kittel* at [43], [44], [45] and [49], the CJEU referred to transactions occurring prior and subsequent to the purchase giving rise to the input tax on which the trader relied, which comes to the same thing. Those words simply go to timing.” (*Fonecomp Ltd v HM Revenue and Customs* [2015] EWCA Civ 39.)

URANIUM. See ENRICHMENT OF URANIUM.

URBAN. “Urban authority”: see hereon *Soothill v Wakefield* [1905] 2 Ch. 516.

“Urban district”; “urban sanitary district”: see DISTRICT. See further *Kirkdale Burial Board v Liverpool* [1904] 1 Ch. 829, cited DISTRICT.

URGENCY. “By reason of the urgency of the matter” (Housing and Planning Act 1986 (c.63) s.61(8)(a)). The “urgency” exemption from the duty to consult contained in this section does not apply to any urgency arising as a result of the minister’s own failure to reach a decision until the last moment (*R. v Secretary of State for Social Security, Ex p. Association of Metropolitan Authorities*, *The Times*, July 23, 1992).

URGENT. “Urgent need” (R.S.C. Ord.64 r.4(2)). A high standard is required to satisfy the court of the urgency of the need to order a trial during the long vacation (*Re Showerings, Vine Products and Whiteways Application* (Practice Note) [1968] 1 W.L.R. 1381).

“Sudden and urgent necessity”: see SUDDEN.

URINAL. The power to local authorities—e.g. s.88 of the Metropolis Management Act 1855 (c.120); s.39 of the Public Health Act 1875 (c.55) (see Public Health Act 1936 (c.49) s.87)—to erect “urinals, water-closets”, etc. does not authorise such erections in such a way as to create a nuisance (*Vernon v St. James, Westminster*, 16 Ch. D. 449; see also *Parish v London*, 67 J.P. 55, cited THINK FIT; see further

DAMAGE). See *Tunbridge Wells v Baird* [1896] A.C. 434, cited IN, with which cp. *Graham v Newcastle-upon-Tyne*, 67 L.T. 260, 790, cited OPEN.

USAGE. "Usage" is that which is known as a recurring modern practice in a locality or business; and does not require a prescription, as a custom does (*Finch's Case*, 6 Rep. 65). Cp. *Att-Gen v Yarmouth*, 21 Bea. 625, cited PRACTICE.

In Marine Insurance Act 1906 (c.41), means trade usage: see *British & Foreign Marine Insurance Co v Gaunt* [1921] 2 A.C. 41, cited RISK.

USAGE OF TRADE. "The words 'usage of trade' are to be understood as referring to a particular usage to be established by evidence; and perfectly distinct from that general custom of merchants, which is the universal established law of the land, to be collected from decisions, legal principles and analogies (not from evidence *in pais*), and the knowledge of which resides in the breasts of the judges" (1 Sm. L.C. 581, 582, and cases there cited). Cp. CUSTOM.

See TRADE.

USAGES. See LIBERTY.

USE. "Use" (Town and Country Planning Act 1947 (c.51) s.12(2)) meant a lawful use, at least, in the sense that a use constituting a criminal or quasi-criminal offence was not within the meaning of the term (*Glamorgan CC v Carter* [1963] 1 W.L.R. 1).

"Use of land" (Town and Country Planning Act 1971 (c.78) s.51(1)(a)) comprises activities which are done in, alongside or on the land but do not interfere with the actual physical characteristics of the land. The storing and sorting of scrap was held to be a "use of land" within the meaning of s.51 on the grounds that it caused no physical alteration to the land. It was not an "operation" within the meaning of the exception to the definition of "use" in s.290(1), as to be an "operation" it would be necessary for some physical alteration to have resulted (*Parkes v Secretary of State for the Environment* [1978] 1 W.L.R. 1308).

"Required for a use other than agriculture" (Agricultural Holdings Act 1948 (c.63) s.24(2)(b)). Land was "required for use" as a sports ground because it had once been so used and the landlord intended to sell it as a sports ground (*Jones v Gates* [1954] 1 W.L.R. 222). The words mean a use by anyone, provided the person is sufficiently definite, and the requirement sufficiently certain.

In relation to road traffic and highways: "Use the . . . vehicles" (Road and Rail Traffic Act 1933 (c.53) s.2(3); see Transport Act 1968 (c.73) s.60). A haulage contractor who hired out vehicles and drivers to another company, to operate solely under the control of that company, was the "user" of those vehicles for the purposes of this section (*Sykes v Millington* [1953] 1 Q.B. 770). An agent who found work for drivers and then contracted with the employer that, once accepted, the driver should be the employer's servant, was not (in the absence of any contract between him and the driver) the "user" of the vehicle (*Alderton v Richard Burgon Associates (Manpower)* [1974] R.T.R. 422).

"Uses . . . a motor vehicle" (Road Traffic Act 1960 (c.16) s.64(2); now Road Traffic Act 1972 (c.20) s.40(5)). A person may not be convicted under these sections unless he is the driver or the driver's employer (*Windle v Dunning & Son* [1968] 1 W.L.R. 552; *Crawford v Haughton* [1972] 1 W.L.R. 572). Since separate provision is made in these sections for an offence of causing or permitting, the verb "use" has a restricted meaning not extending to cover an absent partner merely by virtue of the partnership (*Garrett v Hooper* [1973] R.T.R. 1).

“Use of the vehicle on a road” (Road Traffic Act 1960 (c.16) s.203(3)(a); now Road Traffic Act 1972 (c.20) s.145). A vehicle driven with deliberate felonious intent is “used” on the road within the meaning of this section (*Hardy v Motor Insurers’ Bureau* [1964] 2 Q.B. 845). A vehicle which, at the moment it injured a person standing on private land, was itself largely on a public road, was being used on a road within the meaning of this section (*Randall v Motor Insurers’ Bureau* [1968] 1 W.L.R. 1900). “Use” includes criminal use (*Gardner v Moore* [1984] 2 W.L.R. 714).

“Use a motor vehicle on a road” (Road Traffic Act 1972 (c.20) s.143; now Road Traffic Act 1988 (c.52) s.143). A motor vehicle whose brakes were locked and whose wheels were unable to turn was held not to be in “use” within the meaning of this section as there was no element of controlling, managing or operating it as a vehicle (*Thomas v Hooper* [1986] R.T.R. 1). Although a thumb-print on the rear view mirror of a vehicle might be enough to show that the accused had been in it, it was not enough to establish “use” within the meaning of this section (*Chief Constable of Avon and Somerset Constabulary v Jest* [1986] R.T.R. 372). It is, for the purposes of this section, possible for more than one person to “use” a vehicle, and the user of a vehicle could, in some circumstances, include one whose vehicle was being used for his purposes or on his behalf under his instruction or control (*Haiku Silberman v Cheshire CC* [1993] R.T.R. 32).

“Uses” (Road Traffic Act 1930 (c.43) s.112(1)(a); now Road Traffic Act 1972 (c.20) s.169(1)). Sending a licence to the local authority for renewal did not constitute “user” of the licence with intent to deceive within the meaning of this section (*R. v McCardle* [1958] Crim. L.R. 50). The production of a false driving licence to the police, the request for which had nothing to do with the driving of a vehicle on the road, was held not to be using it with intent to deceive within the meaning of this section (*R. v Howe* [1982] R.T.R. 45).

“Person . . . who uses on a road a . . . trailer” (Road Traffic Act 1972 (c.20) s.40(5)). The owner of a defective trailer who provided it for another person to tow could be said to be “using” it for the purposes of this section, notwithstanding that neither he nor any servant of his was the driver (*NFC Forwarding v DPP* [1989] R.T.R. 239).

“Uses” (Vehicles (Excise) Act 1971 (c.10) s.8(1)). A vehicle owner “uses” the vehicle within the meaning of this section if his employee drives it on the owner’s business, even without his knowledge or authority (*Richardson v Baker* [1976] R.T.R. 56).

“A person using the vehicle” (Motor Insurers Bureau (MIB) Agreement 1972 cl.6(1)(c)). A passenger in a car which was being driven by a driver whom he knew to be uninsured and who was involved in a joint enterprise with the driver was “using the vehicle” within the meaning of this clause (*Stinton v Stinton*, *The Times*, August 5, 1992).

(Road Traffic Act 1988 ss.47(1), 143(1), 185(1).) Where a vehicle which fell within the definition of vehicle in s.185(1) was on a road, the owner had “use” of it on a road whether or not at the material time it had wheels (*Pumbien v Vines* [1996] R.T.R. 37).

Where the owner of a wine bar placed leaflets advertising the bar on the windscreens of cars parked in a council car park he was held to have “used” the vehicles for a purpose in connection with a trade or business contrary to an order made under s.35(1) of the Road Traffic Regulation Act 1984 (c.27) (*Hickman v Chichester DC*, 90 L.G.R. 70).

"Fraudulently alters or uses... any licence" (Vehicles (Excise) Act 1971 (c.10) s.26(1)(c)). Exhibiting an altered vehicle excise licence on a car parked on private land was held not to amount to fraudulent use of the licence within the meaning of this section (*R. v Johnson (Tony)* [1995] R.T.R. 15).

"To be used only for commercial purposes": for the meaning of these words in a motor car insurance policy, see *Roberts v Anglo-Saxon Insurance Association*, 96 L.J.K.B. 590.

"Use for trade" (Weights and Measures Act 1963 (c.31) s.11(2)). The use of unstamped prescribed measuring equipment by the licensee and barman of a public house was held to be "use" by the employers for the purposes of this section (*Evans v Clifton Inns* (1987) 85 L.G.R. 119).

In the context of poaching "If a man walks with a gun with intent to kill game, he 'uses' the gun for that purpose without firing, within the statute which makes using a gun, with that intent, penal" (Maxwell (10th edn), 280, citing Game Acts 1706 (c.16) s.4, and 1831 (c.32) s.23; *R. v King*, 1 Sess. Cas. 88). So, a net could have been "used in taking" salmon (Salmon Fishery Act 1861 (c.109)), though no salmon was then actually caught (*Ruther v Harris*, 1 Ex. D. 97). A person "used" an engine for killing game on a Sunday (Game Act 1831 (c.32) s.3) who placed it on the land prior to, but with the intention for it to remain there during, a Sunday (*Allen v Thompson*, L.R. 5 Q.B. 336; see per Lawrence J., *Jones v Davies* [1898] 1 Q.B. 405).

"Use gun for unlawfully killing or taking game" (Poaching Prevention Act 1862 (c.114) s.2). A gun is used within the meaning of the section if it is taken upon land for the purpose of shooting game and is ready for firing (*Gray v Hawthorn* (1961) S.L.T. 11).

"I strongly incline to think that everyone 'uses' a drain the sewage from whose house communicates with it" (per Cockburn C.J., *R. v Bodkin*, 3 E. & E. 276).

Employers "use" a machine within reg.4(ii) of the Building (Safety Health and Welfare) Regulations 1948 (No.1145), even though they hire the machine and driver (*Gallagher v Wimpey & Co Ltd* (1951) S.L.T. 377). A fan heater which is being run for the purposes of examination and adjustment is not being "used" within the meaning of this regulation (*Baxter v Central Electricity Generating Board* [1965] 1 W.L.R. 200). Further, "use" (Factories Act 1937 (c.67) s.23(1); Factories Act 1961 (c.34) s.26(1)) is not confined to use authorised by the factory owner (*Barry v Cleveland Bridge & Engineering Co* [1963] 1 All E.R. 192).

A clause in an agreement between shipowners and stevedores stated that "the stevedores should not use improper or inadequate gear", this meant "use" in the business sense, which did not necessarily include use of gear not belonging to the owners of the business but incidentally made use of by one of their servants (*T. F. Maithy v Pelton Steamship Co* [1951] 2 All E.R. 954).

Bequest of "the use" of household goods, furniture, plate, jewels, linen, etc. for life, is not confined to a personal use; the beneficiary "may use the goods in his or her own, or any other person's house, alone, or promiscuously with other goods, or may let them out to hire" (per Hardwicke C., *Marshall v Blew*, 2 Atk. 217); and so, of a bequest of oil paintings and other pictures "for the use and enjoyment" of A during her life; and the beneficiary is not bound to insure (*Re Williamson*, 94 L.T. 813); see further OCCUPATION; but see *Re Johnston*, 41 Sc. L.R. 582, cited OCCUPATION; *Wart v London CC*, above. Cp. *Macdonald's Trustees v Barn's Trustees*, 33 Sc. L.R. 649, cited APPROPRIATE.

“Use, exercise, and vend” an invention: see VEND; *Walton v Lavater*, 29 L.J.C.P. 275. “The first meaning assigned to ‘use’ in Johnson’s Dictionary is ‘to employ to any purpose’; it is, therefore, a word of wide signification. It seems to me that the terms ‘use’ and ‘make use of’ are intended to have a wider application than ‘exercise’ and ‘put in practice’; and, without saying that no limit is to be placed on the two former expressions in the patent, I think, on the best consideration that I can give, that they are not confined to the use of a patented article for the purpose for which it is patented” (per Stirling J., *British Motor Syndicate v Taylor* [1900] 1 Ch. 583); that learned judge, accordingly, held that to buy in England an infringing article and then transport it to Paris for sale, was “using”, or “making use of”, the invention in England, and was an infringement of the patent ([1900] 1 Ch. 577, affirmed [1901] 1 Ch. 122, which case dealt with the doubts of the Lord Herschell, *Badische Anilin and Soda Fabrik v Basle Works* [1898] A.C. 208). Observe further, “If a person uses an invention to present his goods for sale and intending the thing exhibited to represent what he is going to sell, and if part of that thing is an article which is an infringement and is serving a useful purpose during that time by being exhibited as part of the machine, I think it is a user of the invention” (per Alverstone C.J., *Dunlop Co v British & Colonial Motor Co*, 18 Pat. Ca. 315). See NON-USER.

“Was used” (Patents Act 1949 (c.87) s.14(1)(d)). Where a manufacturer produced a drug without recognising its patentable potential and then blended it into capsules, where its identity was lost, then that drug “was used”, for the purposes of this section, when the capsules were sold (*R. v Patents Appeal Tribunal, exp. Beecham Group* [1973] 1 Q.B. 318).

A person who has said that A.B. is the proprietor of a trade mark does not use it within s.4(1) of the Trade Marks Act 1938 (c.22) (*M. Ravok (Weatherwear) v National Trade Press* [1955] 1 Q.B. 554).

“Use” (Patents Act 1949 (c.87) s.32). Demonstrations of an invention for the purpose of obtaining finance or to seek licences did not amount to “use” within the meaning of this section (*Vax Appliances v Hoover* [1991] F.S.R. 307).

To “take and use” a name, in a name and arms clause, means to “take and thereafter use”, i.e. there must be a continued user (*Re Drax*, 75 L.J. Ch. 317, cited WRITING).

“Use upon all occasions”: these words in a name and arms clause in a will meant that the beneficiary must use the surname on all occasions when he would ordinarily use a surname, and were sufficiently certain to be valid (*Re Neeld, Carpenter v Inigo-Jones* [1962] Ch. 643).

Bequest of business with “the use of the book debts or capital”, held, an absolute gift (*Terry v Terry*, 9 L.T. 469).

An indorsement of a bill or note “to A or his order, for my use”, puts per sons dealing with it on inquiry to see whether A is using the document for the indorser’s use, or his own (*Sigourney v Lloyd*, 8 B. & C. 622). See hereon RESTRICTIVE ENDORSEMENT; OWN USE; OWN USE AND BENEFIT.

“Use of tobacco” (Food Hygiene Regulations 1955 (No.1906) reg.9(e)). A person “uses” tobacco within the meaning of reg.9(e) if he holds a partly-smoked but extinct cigarette between his lips (*Pitt v Locke* (1960) 58 L.G.R. 330, D.C.).

“Used for the carriage . . . of the thing . . . liable to forfeiture” (Customs and Excise Management Act 1979 (c.2) s.141(1)(a)). An aircraft which, unknown to the airline operators, carried in its cargo a container in which there was cannabis resin was being “used for the carriage” of the cannabis resin within the meaning of this section

notwithstanding circumstances where the airline operators could not be said to be reckless in failing to discover its presence (*Commissioners of Customs and Excise v Air Canada* [1991] 2 W.L.R. 344).

The words "use or hire of a ship" (Administration of Justice Act 1956 (c.46) s.1(1)(h)) are wide enough to cover the hire of a tug under a towage contract (*The Conoco Britannia* [1972] 2 Q.B. 543). They are also wide enough to cover a salvage operation by a salvage tug (*The Eschersheim* [1975] 1 W.L.R. 83). A salvage agreement made between the master of a ship damaged in a collision and a tugmaster, representing the salvors, was an "agreement relating to the . . . use or hire of a ship" within the meaning of this section (*The Jade* [1976] 1 All E.R. 920). See SHIP.

A vessel having had on board prohibited goods had been "made use of" in the importation and landing of such goods, within s.179 of the Customs Consolidation Act 1876 (c.36) (*Att-Gen v Hunter* [1949] 2 K.B. 111).

"Uses . . . the said forged document" (Forgery Act 1913 (c.27) s.6(2)). Making a photostat copy of a forged document, and sending it with a view to deceiving the recipient, is "using" it within the meaning of this section (*R. v Harris* [1966] 1 Q.B. 184).

A chromolin used for the purposes of checking the quality of film used in the printing process could be something "used for the purposes of making a counterfeit note" under the Forgery and Counterfeiting Act 1981 (c.45) s.17(1) (*R. v Maitman*, *The Times*, July 14, 1994).

"For use in the course of or in connection with any burglary, theft or cheat" (Theft Act 1968 (c.60) s.25(1)) means "for use in the future" and not "that has been used in the past" (*R. v Ellames* [1974] 1 W.L.R. 1391).

"Used for the purpose of committing . . . any offence" (Powers of Criminal Courts Act 1973 (c.62) s.43(1)(a)). Money in the possession of a person convicted of supplying drugs had not been "used" by him but by those who had bought the drugs from him, and was therefore safe from forfeiture under this section (*R. v Slater* [1986] 1 W.L.R. 1340).

"Uses . . . causes or permits [land] to be used" (Town and Country Planning Act 1990 (c.8) ss.179(6) and 285(2)).

Retrieving computer-held data and observing its contents on a screen or by means of a printout could not without any further act thereafter constitute "use" contrary to Data Protection Act 1984 s.5(2)(b) (*R. v Brown (Gregory)* [1996] 1 All E.R. 545).

"Use any such data held by him" (Data Protection Act 1984 (c.35) s.5(2)(b)).

"Use" (Diseases of Animals Act 1950 (c.36) s.61(4)(b)). An airline carrier, by virtue of being itself in charge of an animal carried by it, makes "use" of the airport quarantine station within the meaning of this section when, on landing, it places the animal there; notwithstanding that it was not the animal owner's agent, and that it was complying with the requirement of the anti-rabies legislation (*City of London Corp v British Caledonian Airways* [1980] 2 All E.R. 292).

"Uses any apparatus for wireless telegraphy" (Wireless Telegraphy Act 1949 (c.54) s.1(1)). "Uses" in this section has its natural and ordinary meaning and cannot be extended to mean "has the use of" (*Rudd v Secretary of State for Trade and Industry*, [1987] 1 W.L.R. 786; overruling *D. (A Minor) v Yates* [1984] Crim. L.R. 430). See also APPARATUS

(EC Council Directive 77/388 on a common system for VAT art.6.) The words "use of goods" in art.6(2)(a) were subject to strict interpretation which precluded taxation

of private goods forming part of a business for which the taxpayer was entitled to claim a VAT reduction (*Finanzamt Munchen III v Mohsche* (C193/91) [1997] S.T.C. 195).

“Use as a village hall or similarly”: the supplies in respect of refurbishment to a sports and fitness centre which operated in part as a business venture attracted a zero-rating for the purposes of VAT since its objective was to improve conditions of life for members of the local community (*Jubilee Hall Recreation Centre Ltd v Customs and Excise Commissioners* [1997] S.T.C. 414).

The question of where a computerised system is used becomes increasingly difficult to answer as a matter of practicality, with the location of servers and different parts of networks becoming increasingly diffuse. In *Menashe Business Mercantile Ltd v William Hill Organisation Ltd* [2003] 1 W.L.R. 1462 at 1471, Aldous L.J. said: “If the host computer is situated in Antigua and the terminal computer is in the United Kingdom, it is pertinent to ask who uses the claimed gaming system. The answer must be the punter. Where does he use it? There can be no doubt that he uses his terminal in the United Kingdom and it is not a misuse of language to say that he uses the host computer in the United Kingdom. It is the input to and output of the host computer that is important to the punter and in a real sense the punter uses the host computer in the United Kingdom even though it is situated in Antigua and operates in Antigua. In those circumstances it is not straining the word ‘use’ to conclude that the United Kingdom punter will use the claimed gaming system in the United Kingdom, even if the host computer is situated in, say, Antigua”. In other words, the modern technology has not changed the essential concepts of use, but it has made it more frequently possible for a person to use a thing that is physically located a long way away from him.

The expression “use” in relation to an embryo” means its transfer into the female gamete provider (*Evans v Amicus Healthcare Ltd* [2004] 2 W.L.R. 713 F). See also *R. (on the application of Quintavalle) v Human Fertilisation and Embryology Authority* [2003] 3 All E.R. 257, CA.

In s.77 of the Licensing Act 1964 a reference to use of the premises for a specified purpose was to use by the licensee and not by his customers, although the intended use of the licensee could only be judged by reference to his legitimate expectations in respect of his customers. (*R. (Luminar Leisure Ltd) v Norwich Crown Court* [2004] 1 W.L.R. 2512, CA).

See also PROPERTY.

“In motion or in use” (Factories Act 1937 (c.67) s.16, and 1961 (c.34) s.16): see IN MOTION.

Prior use of an invention: see ANTICIPATION; PUBLIC USE.

“Change in the use of any land”: see CHANGE.

“Take or use” a stream: see TAKE.

“Take or use the title” of a profession: see VETERINARY.

Trustee converting property “to his use”: see CONVERT.

Bequest for a person’s “use and disposal”: see DISPOSAL.

“In common use”: see COMMON TO THE TRADE. Cp. IN USE.

“Use for the purpose of”: see PURPOSE; PURPOSES.

“Uses threatening, abusive or insulting words”: see WORDS.

“Uses towards another person”: see TOWARDS.

“Turning to the matter of ‘using’ under section 1, I am again persuaded that the second third party’s approach is too narrow and cannot be sustained. In a road traffic context, especially with motor insurance in mind, the authorities confirm that the concept of ‘use’ is very wide and goes much further than the physical act of driving. In *Elliot, Tudhope, Swan, and Pumbien*, even undriveable vehicles parked on public roads have been held to be ‘used’ for the purposes of insurance and MOT offences, and as the Lord Justice General observed in *Tudhope* the reason for this is that such vehicles may still be a source of danger, and possible injury, to third party road users. The decision in *Thomas* seems to me to be out on a limb here, and in any event to have been more concerned with the question whether the condition of a vehicle was so seized up as to deprive it of the character of a ‘mechanically propelled vehicle’. Whether the wheels were locked solid or not, the vehicle on a public road was patently a source of danger to other people, and if there were thought to be any real conflict between the decision in *Thomas* and the other four cases I would, for my part, have no hesitation in preferring the latter.” (*Turnbull v MNT Transport (2006) Ltd* [2010] Scot. C.S. CSOH 163.)

Stat. Def., Town and Country Planning Act 1971 (c.78) s.290.

See CHARITABLE USE; OWN SOLE USE; REASONABLE USE; RESULTING USE; SEPARATE USE; SOLE; SUPERSTITIOUS; USED; USING; USUAL; IN USE; DEVELOPMENT; OCCUPATION; USE AND OCCUPATION; WORK.

For an extensive list of earlier authorities, see Stroud’s Judicial Dictionary, 5th edn.

“The word ‘use’ is employed as a noun in section 298(2)(b) and in other sections where that word appears in this part of POCA. The noun ‘use’ has various connotations, but in this case I think that its sense, when used in conjunction with some other noun (such as ‘cash’ as in this instance) is that of ‘the application’ of the other thing (in this case the cash) for some purpose which, in this case, is that of intended unlawful conduct. However, to my mind, the appellant did not intend to apply this cash in any positive sense to deceive the benefit authorities. The unlawful conduct of concealing the fact that the appellant had more than the limit of savings of £6,000 would have occurred whether or not the appellant had the money in cash. She could, after all, have had the additional £1,150 in a bank account or, indeed, all £7,150 in a bank account. The intent was to conceal the fact of having that sum of money in savings. In my view, the unlawful conduct that was intended by this appellant was to conceal the fact that she had savings greater than the limit of £6,000 in order that her benefits would not be reduced. That does not amount to the ‘use’ of the cash in the unlawful conduct intended in this case. In fact, it was the very opposite of a ‘use’. The appellant intended to conceal the fact that she had the money, but did not intend its use in any other way in order to further her intended unlawful conduct.” (*Begum v West Midlands Police* [2012] EWHC 2304 (Admin).)

See IN USE.

USE (COMPUTERS—RIGHT TO CONTROL). The expression “a right to control the operation or the use of the system” in s.1 of the Regulation of Investigatory Powers Act 2000 means a right to control how the system is used and operated by others (*R. v Stanford* [2006] EWCA Crim 258).

See OCCUPATION.

USE AND BENEFIT. A legacy, by a person not in loco parentis, for the “use and benefit” of the legatee, does not indicate such a particular purpose as that there will be

an ademption of it by a subsequent settlement of a like amount on the legatee by the same person (*Re Smythies* [1903] 1 Ch. 259). See further *Harris v Grierson* [1922] 2 Ch. 359. Cp. OWN USE AND BENEFIT.

USE AND DISPOSAL. See DISPOSAL.

USE AND ENJOYMENT. See *Re Williamson*, 94 L.T. 813, cited USE.

USE AND OCCUPATION. A devised to his wife the income of freeholds at B and leaseholds at P, and bequeathed to her his furniture and effects in his house at E, and desired that she should “have the free use and occupation of the said house”; held, that she was absolutely entitled to the properties at B and P, but took only a life interest in the house at E (*Coward v Larkman*, 60 L.T. 1). See OCCUPATION; RESIDE; ACTUAL USE OR OCCUPATION.

A direction by a testator that his widow should be entitled to “use and occupy” his house and furniture “for her own personal use and occupation” was held not to entitle her to let or sell the house and receive the rent or the proceeds of the sale, or to sell the furniture and retain the proceeds (*Re Anderson* [1920] 1 Ch. 175).

USE FOR CONSTRUCTION PURPOSES. See CONSTRUCTION PURPOSES.

USE FOR TRADE, BUSINESS OR PROFESSION. For discussion of ancillary uses of domestic premises in connection with trades, see *Snowie v Museum Hall LLP* [2010] Scot. C.S. CSOH 107.

USE OR ORNAMENT. Articles of “household use or ornament”: see HOUSEHOLD.

USE OR PERMIT. Where a local board do not act themselves to create a nuisance, and are endeavouring to put in force their powers to effect a perfect system of drainage, it is no ground of action to an individual that the board do not take proceedings under their Acts to prevent persons from unlawfully draining into their sewers, in consequence of which draining an additional and serious nuisance is caused to that individual; and they cannot be said “to use or permit to be used” the sewers so as to cause a nuisance, by abstaining from taking such proceedings (*Att-Gen v Dorking*, 20 Ch. D. 595).

See PERMIT.

USED. A thing “used” for a particular purpose is not synonymous with its “being used”, or “use”, for that purpose; for, semble, such latter phrases connote, necessarily, an actual user, which “used” does not. Therefore, a place underground may have been “used” as a bakehouse at the commencement of the Factory Act 1895 (c.37), and so exempt from s.27(3) of that Act, if that had previously been its purpose and actual use, though not then actually so used because untenanted, but the landlord of which was seeking to let it to a baker which he afterwards did (*Schwerzerhof v Wilkins* [1898] 1 Q.B. 640).

So, a Hackney carriage means a wheeled carriage “used in standing of plying for hire”, which does not mean “when being used”, for “used” in that connection indicates the purpose for which the carriage is to be used (*Hawkind v Edwards* [1901] 2 K.B. 169, cited HACKNEY CARRIAGE).

The words “used for the drainage” in s.343 of the Public Health Act 1936 (c.49) defined the function of a pipe as a sewer and not its actual user. The test was not whether a pipe was being used for drainage but whether it could be, and accordingly a sealed off pipe was still a sewer (*Blackdown Properties v Ministry of Housing and Local Government* [1967] Ch. 115). A channel can only be said to be “used” for drainage within the meaning of this section if drainage was at least one of its functions, and a culvert built under a railway line to drain land did not become used

for drainage when, after building development in the area, it had to carry surface water from the buildings (*British Railways Board v Tonbridge DC* (1979) 78 L.G.R. 257).

But "used" and "in use" (Caravan Sites and Control of Development Act 1960 (c.62) s.13) have been held to be synonymous and not to cover discontinued use (*Bliss v Smallburgh Rural DC* [1965] Ch. 335).

Fixtures, etc. "used" in any land, etc. (Bills of Sale Act 1882 (c.43) s.6(2)), means things retained on the premises for use; therefore, a cab proprietor's horses are not "plant" "used in" his mews, for their sole use is in the streets where the cabs are hired and the profits of the business are earned. They may be harnessed or unharnessed on the premises, but they are not used, for the purposes of the business, there (per Esher M.R., *London & Eastern Counties Loan Co v Creasy* [1897] 1 Q.B. 768, cited PLANT). See further BROUGHT UPON.

Used "bona fide for any business", under s.16 of the Finance Act 1910 (c.35): see *Ferguson v Inland Revenue Commissioners* [1917] 1 K.B. 193, cited DWELLING-HOUSE.

"Laid out and used" as burial ground: see *Young v Kingston-on-Thames Committee* [1906] 1 K.B. 338, cited LAID OUT.

Ground not "already used" as a cemetery: see *Godden v Hythe Burial Board* [1906] 2 Ch. 270, cited ALREADY.

Building "used for the education of the poor": see *Hadfield v Liverpool*, 80 L.T. 566, cited EDUCATION.

Part of a factory or workshop "not used for any manufacturing process or handicraft" (Factory and Workshop Act 1901 (c.22) Sch.2 s.4) connoted "a room never used for that purpose, either during the preceding hours of the day or during the time when the permitted overtime employment is being carried on" (per Alverstone C.J., *Smith v Sibray* [1903] 2 K.B. 707).

"Used" (Fats, Cheese and Tea (Rationing) (No.2) Order 1946 (No.1116) art.8): see *Quaintways Restaurant v Budd* [1948] 2 K.B. 231.

Ship or vessel "used in navigation": see VESSEL; *R. v Southport*, 62 L.J.M.C. 47, cited SHIP.

"Used for the purposes of": see PURPOSE; PURPOSES; TRAFFIC; *Commissioner of Taxation v St. Mark's* [1902] A.C. 416; *Tylecote v Morton*, 85 L.T. 692.

"Used as a trade-mark"; see *Richards v Butcher* [1891] 2 Ch. 536, cited TRADE-MARK.

"Lands, buildings, works, materials, and plant, of the promoters suitable to, and 'used' by them for the purposes of their undertaking within such district" (Tramways Act 1870 (c.78) s.43): see *Re Manchester Carriage Co and Ashton-under-Lyne*, 68 J.P. 576; *Manchester Carriage Co v Swinton*, 90 L.T. 795; affirmed in House of Lords [1906] A.C. 277; this last case decided that "within such district" referred to "undertaking", so that if the undertaking was within the district its property outside the district was included.

"Used or proposed to be used" (Trade Marks Act 1905 (c.15) s.3): these words meant "used or proposed to be used in the United Kingdom"; see *Re Neuchâtel Asphalt Co's Application* [1913] 2 Ch. 291; see Trade Marks Act 1938 (c.22) s.68.

"Used for charitable purposes" (General Rate Act 1967 (c.9) s.40): see CHARITABLE PURPOSES.

"Used for ecclesiastical purposes" (Town and Country Planning Act 1971 (c.78) s.56(1)): see ECCLESIASTICAL PURPOSES.

Boiler “used exclusively for domestic purposes”: see DOMESTIC.

“Used or enjoyed”: see APPURTENANCES; HELD; WAYS.

“Used or exercised”: see ART; EXERCISE; USE.

“Provided and used”: see PROVIDED.

“Used as an ordinary agricultural farm”: see AGRICULTURAL.

“Place used” for betting, or for dancing: see PLACE; PUBLIC DANCING.

“Land used as a racecourse”: see RACECOURSE.

“Land used only as a railway”: see RAILWAY.

“Used for trade”: see TRADE.

See WORK EQUIPMENT.

USED AT WORK. See *Smith v Northamptonshire County Council* [2009] UKHL 27.

USED FOR THE PURPOSES OF. See also IN SERVICE.

USELESS. “Useless, and be no longer required for the purposes of such road” (Turnpike Act 1823 (c.95) s.57): see *R. v Greenlaw*, 4 Q.B.D. 447.

See REQUIRED.

USER. “User” of trade mark: see *Re Eastex Manufacturing Co’s Application* [1947] 2 All E.R. 55.

A policy of insurance is in force in relation to the user of a vehicle if the owner’s liability for accidents is covered by an insurance policy (*John T. Ellis v Hinds* [1947] K.B. 475).

Refusal to an assignment of a lease because the landlord wishes to prevent the creation of a statutory tenancy is not connected with the “user or occupation” of the premises (*Re Swanson’s Agreement* [1947] L.J.R. 169).

“User” of a licence (Road Traffic Act 1930 (c.43) s.112(1)(a)). See *R. v McCardle* [1958] Crim. L.R. 50, cited USE, para.(31).

(Road Traffic Act 1988 (c.52) Pt VI and Motor Insurers Bureau (Compensation of Victims of Uninsured Drivers) Agreement 1972 cl.6(1)(c)(ii).)

A pillion passenger on an uninsured motorcycle was not a user of the vehicle within the meaning of cl.6(1)(c)(ii) of The 1972 Agreement in the absence of a sufficient degree of control of management of the vehicle (*Hatton v Hall*, *The Times*, May 15, 1996).

The operation of an incinerator for the commercial destruction of hazardous waste was not within the “reasonable user” under Scottish law since it was not necessary for the common and ordinary use and occupation of the land (*Graham v Rechem International Ltd* [1996] Env. L.R. 158).

Stat. Def., Iron and Steel Act 1949 (c.72) s.23(5); Resale Prices Act 1964 (c.58) s.5(4); Restrictive Trade Practices Act 1976 (c.34) ss.10(2), 19(2); Resale Prices Act 1976 (c.53) s.14.

“Area of user”: see AREA.

“New and unusual user”: see NUISANCE.

“Prior user”: see ANTICIPATION; PUBLIC USE.

See NON-USER; PRESCRIPTION; USE.

USER-FOCUSED. Stat. Def., “any reference to the carrying on of activities as ‘user-focused’ activities is a reference to the carrying on of the activities in a way that focuses on the needs of those for whose benefit the activities are carried on” (Education and Inspections Act 2006 s.159(2)).

USES. Statute of Uses 1535 (27 Hen. 8, c.10). See USE.

USING

USING. Where a contract for works, e.g. for building a ship or a house, contains a clause enabling the contractee on default by contractor to complete the works, "using" therein such materials of the latter "as shall be applicable for the purpose"; the property in materials does not, under the word "using", pass to the contractee until he has actually used, or at least has actually begun to use, them in such completion; merely appropriating them for the purpose of so using them will not suffice (*Baker v Gray*, 25 L.J.C.P. 161; cp. *Re Winter*, 8 Ch. 225, cited PROPERTY).

"Using" premises "for the purposes of" betting (Betting Act 1853 (c.119) s.3): see *Belton v Busby* [1899] 2 Q.B. 380. See further USE, paras (4), (5), (6), (7) and (8).

Using a railway: "the word 'using' at the end of s.90, Railways Clauses Consolidation Act 1845 (c.20), signifies using in any sense; and is not confined to using by sending engines and other carriages along the line. The section applies to all tolls without distinction, and unless 'using' includes using by sending goods, a distinction not warranted by the Act will be drawn between tolls for passengers engines and carriages on the one hand, and tolls for goods sent in the ordinary way on the other" (per Lindley L.J., delivering the judgment, *Manchester, Sheffield & Lincolnshire Railway v Denaby Main Co*, 14 Q.B.D. 209; partly reversed in House of Lords, 11 App. Cas. 47; see also *Evershed's Case*, 3 App. Cas. 1029).

To constitute "an arrangement for using" steam vessels so as to get a through traffic rate under s.11 of the Regulation of Railways Act 1873 (c.48), the agreement between the railway company and the owner of the vessels had to be definite, and contain an obligation on the part of such owner to PLY between the specified ports (*Caledonian Railway v Greenock & Wemyss Bay Railway*, 4 Ry. & Can. Traffic Cas., 70; see further *Ayr S.S. Co v Glasgow & South Western Railway*, *ibid.* 81).

"Using the trade of merchandise", in the old bankruptcy Acts, meant that such "using" continued so long as the person did not pay his trade debts (*Ex p. Bamford*, 15 Ves. 449; per Jessel M.R., *Ex p. McGeorge*, 20 Ch. D. 697). Cp. CARRY ON.

The offence of fraudulently "using" a weighing machine (Weights and Measures Act 1878 (c.49) s.26) was not committed by selling, e.g. a packet of sugar, which had been weighed on a correct weighing machine but which was of less weight of sugar than the quantity demanded by the weight of the paper in which it was wrapped (*Stone v Tyler* [1905] 1 K.B. 290); this section "points to some trick employed in the manipulation of the weighing machine, as such" (per Alverstone C.J., *Stone v Tyler* [1905] 1 K.B. 290). Cp. *King v Spencer*, 2 L.G.R. 984, and *Harris v Allwood*, 57 J.P. 7, both cited WILFULLY; see further UNJUST.

It was "using" a net for catching salmon in contravention of s.36 of the Salmon Fishery Act 1865 (c.121) to have it in a boat on a salmon river with the object of catching salmon, although it might not, as yet, have been put into the water: see *Moses v Raywood* [1911] 2 K.B. 271.

As to what constituted "using the premises for illegal or immoral purposes" within the meaning of s.4 of the Increase of Rent, etc. Restrictions (Continuance) Act 1923 (c.7), see *Schneiders & Son Ltd v Abrahams* [1925] 1 K.B. 301. See also *Yates v Morris* [1951] 1 K.B. 77; NUISANCE, para.(18).

Using a patent: see USE.

See USE; USED.

USQUE AD. See QUAMDIU.

USUAL. To determine whether a clause, condition, or thing, is "usual", the first inquiry is: Is the subject-matter before, or within, recent memory?

Where the subject-matter is something enacted or created "before" recent memory, almost any kind of traditive experience may be given in proof. A conspicuous example was furnished when the ornaments rubric of the Church came in question, and the courts, in order to ascertain what is now lawful, had to determine what ornaments were "in use" by authority of Parliament in the second year of Edward VII. There, the literature of the age of the Reformation and the time immediately subsequent, was received in proof (*Elphinstone v Purchas*, L.R. 3 A. & E. 66, L.R. 3 P.C. 245).

Where the subject-matter is something enacted or created "within" recent memory the principles by which what is "usual" is to be determined, are not so easy of statement. What is "usual" is a fact; not a conclusion of law (*Hampshire v Wickens*, 7 Ch. D. 555). But just as the question of fact of what is reasonable notice to quit as between masters and domestic servants has in process of time crystallised into a set formula of a month's notice or a month's wages, so the courts take judicial notice of some clauses as being "usual" and reject others. In those cases, however, where no such judicial conclusion has been arrived at, the question of what is a "usual" clause, condition, or thing, is a fact to be established by proof, having regard to (a) the subject-matter, (b) its locality, (c) its time of arising, and (d), sometimes, its circumstances.

(a) The subject-matter must be considered where it is of a special nature, e.g. leases of property used for particular trades; "as in the case of leases of public-houses where the brewers have their own forms of leases, and the usual covenants there would mean the covenants *always inserted in the leases of the particular brewer*" (per Jessel M.R., *Hampshire v Wickens*, 47 L.J. Ch. 245: should not the words italicised read, "usually inserted in the leases of brewers in the neighbourhood"? In *Hodgkinson v Crowe*, 44 L.J. Ch. 681, James L.J. said, "You cannot by the usage between some landlords and some tenants for 10, 20, or even 50 years, make a change in the law"). So, also referring to a lease of a public-house, Tenterden C.J., in *Bennett v Wormack* (6 L.J.O.S.K.B. 175), said: "That which is usual in leases of one description of property may not be so in leases of another".

(b) As to locality. In *Wilbraham v Livesey* (18 Bea. 210), Romilly M.R., said that in a lease of a house in Grosvenor Square, London, there might be inserted different covenants from those in a lease in a trading locality. So, in *Hodgkinson v Crowe* (L.R. 19 Eq. 591), Bacon V.C. admitted evidence of what clauses were usual in mining leases in the district where the property was situate. So also did Fry J. in *Strelley v Pearson* (15 Ch. D. 113). See also *Boardman v Mostyn*, 6 Ves. 467, 471; *Harwood v Silber*, 30 Ch. D. 404.

(c) As to time: "Usual covenants may vary (in their meaning) in different generations . . . What is well known in one time may in another cease to be usual" (per Jessel M.R., *Hampshire v Wickens*, 7 Ch. D. 555).

(d) As to circumstances: "I do not think that the word 'usual' is in many cases to be read with reference to the surrounding circumstances; but I agree that the court has a right to know, and is bound to know, all the material facts which were known to the parties at the time when the agreement, deed, document, will, or whatsoever it may be was entered into or made" (per Kay J., *Hart v Hart*, 50 L.J. Ch. 704, 705. In the report of this passage in the 18 Ch. D. 692, it runs, "I 'do' think", and this would seem the correct reading). But in that case evidence of negotiations preliminary to an agreement for "usual" clauses was rejected. In *Eadie v Addison* (52 L.J. Ch. 80) the circumstances that an intending lessee was a brewer who lived a long distance from

the public-house which was the subject of a demise agreement, and that it was not at all likely that the brewer was going to carry on the business at the public-house himself, was strongly relied on by the court in rejecting a clause against underletting, the agreement there having stipulated for "proper clauses".

In cases not already judicially determined, the proof of what would be "usual" clauses, having regard to the special subject, its locality, or circumstances, would as a rule be furnished by the testimony of such living witnesses, whoever they might be, that might happen to have the information (*Hodgkinson v Crowe*, above). But where the question is of a general character the proof of what are "usual" clauses may be furnished by:

(a) considering the provisions of Acts of Parliament, *in pari materia* (*Hodgkinson v Crowe*, 10 Ch. 622).

(b) the evidence of conveyancing counsel (*Hart v Hart*, 18 Ch. D. 670), and, possibly, of solicitors as being "the most likely to possess extensive and accurate knowledge on this subject" (27 S.J. 130);

(c) books of conveyancers' forms or text books (*Doe d. Jersey v Smith*, 7 Price, 281, 282; *Hampshire v Wickens*, above; *Hodgkinson v Crowe*, above; *Hart v Hart*, above). As regards this latter class of evidence it has been thus questioned: "Books of precedents are not conclusive evidence of the general practice... They provide a precedent in the form in which it may be presented by the party who has to prepare the draft... It is impossible to cross-examine a precedent book" (27 S.J. 130). To which it may be added, "'usual covenants' does not mean universally inserted" (Dwar. (2nd edn), 692). See further below, para.(5).

The question as to what are "usual" clauses arises most frequently as regards leases.

The following passage from *Davidson's Precedents* (3rd edn), "Leases", Vol.5, Pt 1, 53, was quoted with approval by Jessel M.R. in *Hampshire v Wickens*, above: "The result of the authorities appears to be that in a case where the agreement is silent as to the particular covenants to be inserted in the lease, and provides merely for the lease containing usual covenants, or, which is the same thing, is an open agreement without any reference to the covenants; 'and there are no special circumstances' justifying the introduction of other covenants, the following are the only clauses which either party can insist upon, namely: Covenants 'by the lessee'—

- (1) "to pay rent;
- (2) "to pay taxes, except such as are expressly payable by the landlord;
- (3) "to keep and deliver up the premises in repair; and
- (4) "to allow the lessor to enter and view the state of repair. A clause for re-entry in default of payment of rent.

"The usual qualified covenant 'by the lessor' for quiet enjoyment".

See also *Hodgkinson v Crowe* (above); and the rule as regards forfeiture clause was not altered by s.14 of the Conveyancing Act 1881 (c.41) (see Law of Property Act 1925 (c.20) s.146), although thereunder the court might relieve against forfeiture for other causes than non-payment of rent (*Re Anderton and Milner*, 45 Ch. D. 476).

As to the covenant for payment of taxes, see *Canadian Pacific Railway v Toronto* [1905] A.C. 33.

In considering what other clauses may be insisted on as "usual" in leases the judgment in the leading case of *Church v Brown* (15 Ves. 258) should be kept in view. Lord Eldon there (268) expressed himself as follows: "The safest rule for property is

that a person shall be taken to grant the interest in an estate which he proposes to convey, or the lease he proposes to make, and that 'nothing which flows out of that interest as an incident is to be done away by loose expressions', to be construed by facts more loose; that it is upon the party who has foreborne to insert a covenant for his own benefit to show his title to it; and that it is safer to require the lessor to protect himself by express stipulation, than for Courts of Equity to hold that contracting parties shall insert not restraints expressed by the contract or implied by law, but such, more or less in number, as individual conveyancers shall from day to day prescribe, as proper to be imposed upon the lessee" (see this passage cited *Hodgkinson v Crowe*, 44 L.J. Ch. 682). The question what are "usual covenants" in a lease is a question of fact to be decided in the circumstances of the particular case. On the evidence, a covenant to do nothing to the inconvenience of occupiers of neighbouring premises was held to be an unusual covenant in a lease of a single house, and a proviso for re-entry on breach of any of the covenants in the lease was also held to be unusual (*Flexman v Corbett* [1930] 1 Ch. 672).

It would seem that the principles of *Church v Brown*, above would prevent a lessor of land from insisting on a reservation of timber, minerals, or game (but see GROUND GAME) unless such a reservation were expressly provided by the contract; and in view of those principles it is perhaps permissible to question the practical value of the suggestions of Bacon V.C., towards the conclusion of his judgment in *Hodgkinson v Crowe* as to what clauses are customary in mining leases (L.R. 19 Eq. 591). The reservation in a mining lease of liberty to the lessor and his agents and workmen to enter and examine the workings can be insisted on as usual (*Blakesley v Whieldon*, 11 L.J. Ch. 164); and in a mining lease, granted under a power, a power enabling the lessee to build conveniently placed cottages for workmen is "necessary or usual" (*Morris v Rhydydefed Co*, 28 L.J. Ex. 119).

A clause in a colliery lease in Derbyshire (or, semble, anywhere else) to entitle the lessee "to determine the lease" when the mine cannot be worked to a profit, is not usual (*Strelley v Pearson*, 15 Ch. D. 113).

A proviso "suspending rent" in case of fire is not "usual" (*Doe d. Ellis v Sandham*, 1 T.R. 705). Rent is not even suspended where the landlord has received compensation for injury by fire under a policy effected by him with an insurance company (*Leeds v Cheetham*, 1 Sim. 146; *Lofft v Dennis*, 28 L.J.Q.B. 168).

The extract from Davidson above given (para.(5); see also Woodf. (24th edn), 186) shows that it was usual for a tenant to covenant to pay taxes "except such as are expressly payable by the landlord"; e.g. as included in such exception, landlord's property tax (Income Tax Act 1842 (c.35) ss.73, 103)), the proportionate part of land tax (Land Tax Act 1796 (c.5) s.17; see thereon Woodf. (24th edn), 664), sewers rate (Woodf. (24th edn), 641), one half the cattle plague rate (Contagious Diseases (Animals) Act 1868 (c.70) s.89), special paving rates under Metropolis Management Acts (*Allum v Dickinson*, 9 Q.B.D. 632), and tithe rent charge (Tithe Act 1836 (c.71) s.80 *Parish v Sleeman*, 29 L.J. Ch. 96). Apt words in the agreement might have thrown all the foregoing landlord's taxes on the tenant, except the landlord's property tax and tithe rent charge. See IMPOSED; NET; OUTGOING; TAXES.

As regards the covenant to repair, the lessee is not (under an agreement for "usual" clauses) entitled to have introduced into the covenant the words, "damage by fire or tempest excepted" (*Sharp v Milligan*, No.2, 23 Bea. 419; *Kendall v Hill*, 6 Jur. N.S. 968; Woodf. (24th edn), 187), not even though it be proved that it is the practice in the

locality for the landlord to insure (*Thorpe v Milligan*, 5 W.R. 336); nor, semble, to have inserted the words, "reasonable wear and tear excepted" (27 S.J. 177).

Default in payment or rent (query also bankruptcy of lessee, *Church v Brown*, 15 Ves. 268; *Haines v Burnett*, 27 Bea. 500; but certainly not the words "if any execution should issue against him", *Hyde v Warden*, 3 Ex. D. 72) is the only "usual" ground of FORFEITURE (*Hodgkinson v Crowe*, 10 Ch. 622; s.18(7) of the Conveyancing Act 1881 (c 41); see Law of Property Act 1925 (c.20) s.99(7)); except where the use, or non-use, of the premises for particular purposes is of the essence of the bargain between the parties, e.g. a proviso in a lease of a public-house for re-entry in the event of the premises being used for carrying on another business than that of a licensed victualler, which is a "usual" proviso (*Bennett v Wormack*, 6 L.J.O.S.K.B. 175; see hereon Seton, 2277).

A covenant "against assigning", or underletting, is not "usual", not even if the stipulation be offered that the landlord's assent shall not be unreasonably withheld (*Henderson v Hay*, 3 Bro. C.C. 632; *Church v Brown*, 15 Ves. 258; *Hodgkinson v Crowe*, above; which last case overrules *Haines v Burnett*, 29 L.J. Ch. 289, see per Jessel M.R., *Hampshire v Wickens*, 7 Ch. D. 555; see also *Re Lander and Bagley* [1892] 3 Ch. 41; *Bishop v Taylor*, 60 L.J.Q.B. 556; *Wilcox v Redhead*, 49 L.J. Ch. 539; *Buckland v Papillon*, 2 Ch. 67), nor is it a "usual" clause which requires a lessee of a public-house to give notice to the lessor or his solicitor of an assignment of the lease (*Brookes v Drysdale*, 3 C.P.D. 52).

Although the law is thus clear against the usuality of clauses restricting assignment, yet when a clause restricting assignment is in fact inserted in a lease and forfeiture is prescribed to follow on its breach, that is not a forfeiture against which relief is provided by the Conveyancing Act 1881 (c.41) s.14(6) (see Law of Property Act 1925 (c.20) s.146(8)), on which see *Barrow v Isaacs* [1891] 1 Q.B. 417, cited UNREASONABLY. NO FINE is to be exacted on a licence to assign, unless expressly provided for in the lease (Law of Property Act 1925 (above) s.144).

Exceptionally, a lease may so distinctly indicate the requirement of a personal occupation by the lessee or other person as to imply a condition against underletting (*Kehoe v Lansdowne*, 62 L.J.P.C. 101).

A question has been raised (27 S.J. 177) as to whether a covenant obliging the "lessee to insure" could be insisted on as "usual". The opinion there expressed is that it could; Mr Davidson says that "probably" it could not (Prec. (3rd. edn), "Leases", Vol.5, Pt 1, 53); and to that effect is *Wilcox v Redhead*, above.

Probably the most difficult question on what "usual" clauses might be insisted on in leases, would arise as to "restrictions" prohibiting the absolutely unfettered use and enjoyment of the premises during the term at the free will of the lessee. It is common learning to say that, generally speaking, no such restriction could be insisted on (*Church v Brown* and *Hodgkinson v Crowe*, above). A covenant to do nothing to the inconvenience of occupiers of neighbouring premises was held to be an unusual covenant in a lease of a single house, and a proviso for re-entry on breach of any of the covenants in the lease was also held to be unusual (*Flexman v Corbett* [1930] 1 Ch. 672). But where, as previously suggested, the use, or non-use, of the premises for particular purposes is of the essence of the bargain between the parties, there it would be proper and "usual" to provide for such use, or against such non-use. Such a doctrine would seem to be well within the meaning of "special circumstances" referred to in the extract given above from Davidson and the commentary of the M.R. thereon in

Hampshire v Wickens. No doubt the application of the doctrine just enunciated would, in many cases, be difficult. But in *Bennett v Wormack* (above) it was held that a lessor of a public house is entitled, as a "usual" clause, to have a proviso forfeiting the lease in case of the premises being used for a business other than that of a licensed victualler; and a fortiori he would be entitled to a "covenant" against such a use; and if so, why should he not be entitled to a similar covenant with an accompanying proviso for re-entry for the purpose of ensuring that the business of a licensed victualler shall be carried on uninterruptedly during the whole of the term and the necessary certificates and licences duly taken out by the lessee? This would be only the completion of the rule of which the other part was established by *Bennett v Wormack*. Without this further provision a lessee might destroy or imperil that part of the property—its character of monopoly as licensed premises—which is the subject-matter of the lease, and the upholding of which may fairly be regarded as of the essence of the bargain between the parties. But it is not "usual" covenant, even in a public house lease, which requires the lessee to reside on the premises and personally conduct the business (*Re Lander and Bagley*, above).

But besides public-houses, may not there be other property the peculiar characteristics of which would as much be entitled to protection? Thus in *Hyde v Warden* (3 Ex. D. 72; see thereon *Reeve v Berridge*, 20 Q.B.D. 523) a covenant not to mow meadow land more than once a year was held not unreasonable or unusual; see further as to farming leases, *Bell v Barchard*, 16 Bea. 8.

Observe, however, that in *Midgley v Smith* [1893] W.N. 120, Romer J. held that covenants by a lessee (1) prohibiting other erections than those standing at the date of the lease, (2) prohibiting user of the house as an asylum, dispensary, or other similar institution, or otherwise than as a private house, (3) for registering assignments with the lessor and paying a fee, and (4) for rebuilding in case of fire to the satisfaction of the lessor's architect, were unusual and unreasonable covenants in the lease of a detached residence with a garden, situate at Putney.

Conditions in restraint of trade are, generally speaking, not "usual" (*Propert v Parker*, 3 My. & K. 280; *Van v Corpe*, 6 L.J. Ch. 208; *Wilcox v Redhead*, 49 L.J. 539; *Wilbraham v Livesey*, 18 Bea. 206); but, as was suggested in the last-named case, supposing a house be situate in the most fashionable part of London, with circumstances under which to carry on trade in it would be seriously to diminish its value; would not that be pro tanto destroying the thing leased, against which the lessor would be entitled to a covenant and clause of forfeiture as a fair and "usual" term of the contract? So, too, of premises where a business of very long standing has been carried on, and the continuance of which business on the premises demised would be fairly collected as of the essence of the bargain. So, too, perhaps, where premises are specially and exclusively adapted for a special kind of occupation, that kind of occupation ought to be preserved by proper "usual" clauses. So again, where the continuance of workings goes to the preservation of the thing demised—e.g. pumping water from a mine—that would seem of the essence of the bargain which the lessor should be able to insist on providing for (see *Strelley v Pearson*, 15 Ch. D. 113).

It may be added that an agreement for a lease, which stipulates that the lessee is "not to use" the premises for other than a specified trade, and providing for all usual covenants, does not warrant the insertion in the lease of an affirmative covenant by the lessee that he will "carry on" such trade during the term (*Doe d. Bute v Guest*, 15 M. & W. 160).

As to what covenants and conditions are not usual, and which it is the duty of a vendor to disclose, see *Re Haedicke and Lipski* [1901] 2 Ch. 666, cited CONSTRUCTIVE; *Crosse v Morgan*, 60 L.T. 703, inf.; *Melzak v Lilienfield* [1926] Ch. 480.

On an assignment of a lease, usual covenants by the assignor are given in Conveyancing Act 1881 (c.41) s.7(1)(B), (D) (see Law of Property Act 1925 (c.20) s.76(1)(B), (D), Sch.2); and by the assignee, that he will thenceforth pay the rent and fulfil the lessee's covenants thenceforth to be performed or observed, and keep the assignor and his representatives indemnified and harmless therefrom.

Leases under powers. Where the power requires that "the usual and reasonable covenants" shall be inserted, the lease must contain covenants as were contained in leases of the same property at the time of the creation of the power; otherwise the power will not be well executed (*Doe d. Egremont v Stevens*, 6 Q.B.D. 208); but, there the court "inclined to think" that such words in a power as "usually so leased" would not prevent the joining in one lease of tenements that had generally been let separately, provided all the tenements were comprised within the power. See further *Doe d. Egremont v Williams*, 11 Q.B. 688; Woodf. (24th edn), 56.

As to "usual" clauses in underleases, see *Williamson v Williamson*, 9 Ch. 729; *Haywood v Silber*, 30 Ch. D. 404.

As regards deeds in general: what is "usual" has (when the point is uncovered by authority) to be determined "according to the practice and customs of conveyancers in such cases" (per Kay J., *Hart v Hart*, 18 Ch. D. 670; *Doe d. Jersey v Smith*, 7 Price, 281, cited above, para.(4)(c)). In *Hart v Hart*, it was held that the *dum casta* clause, in deed of separation between husband and wife securing an allowance to the latter, is not "usual" (see also as to practice in matrimonial causes, *Gandy v Gandy*, 7 P.D. 168, on which case see *Bishop v Bishop* [1897] P. 138; see further *Harrison v Harrison*, 12 P.D. 130; *Lander v Lander* [1891] P. 161, commented on in *Squire v Squire* [1905] P. 4; *Wood v Wood* [1891] P. 272; *Kettlewell v Kettlewell* [1898] P. 138; *Smith v Smith* [1898] P. 28; but see *Edwards v Edwards* [1894] P. 33; see also *Brailey v Brailey* [1922] P. 15, where it was held that a covenant by a wife in a separation deed to indemnify the husband against antecedent debts was not a usual covenant); but a clause that a trustee shall be found for the wife "who will enter into such covenants as in such a deed a trustee usually enters into on behalf of the wife with the husband" (*Hart v Hart*, above) is "usual". See DUM.

A clause providing for a three months' notice prior to sale is "usual" in a mortgage (*Craddock v Rogers*, 53 L.J. Ch. 968); see also s.103, Law of Property Act 1925 (c.20).

A clause in a mortgage preserving the right to consolidate, and excluding s.17 of the Conveyancing Act 1881 (c.41), was not "usual" (*Farmer v Pitt* [1902] 1 Ch. 954, cited REQUIRE). See Law of Property Act 1925 (c.20) s.93.

As to usual clauses in partnership articles: see Lindley P. (11th edn), p.500 et seq. The cases there digested, though full of valuable suggestions as to what ought to be inserted in partnership articles, hardly lay down rules for determining what clauses would be judicially inserted under an agreement stipulating for "usual" clauses. Still they throw much light even on that difficult question.

As to the usual covenants by a purchaser, on a conveyance of freeholds subject to conditions as to user, see *Re Poole and Clark* [1904] 2 Ch. 173; on an assignment of leaseholds, see *Harris v Boots* [1904] 2 Ch. 376; *Reckitt v Cody* [1920] 2 Ch. 452.

The following are usual powers in settlements pursuant to articles: Leasing for 21 years; sale and exchange; maintenance and advancement (but not HOTCHPOT); varying securities; appointment of new trustees; partition where property joint; leasing mines; building leases where the land is fit for building, unless mere occupation leases for (say) 21 years have been expressly prescribed and then, on the principle *expressio unius exclusio alterius*, building leases would be excluded (Lewin (14th edn), 547, 548, and cases there cited). Powers to jointure or other powers to confer personal privileges would "not", generally speaking, be "usual" (Lewin (15th edn), 520). See also Settled Land Act 1925 (c.18), ss.26, 38, 39, 41, and Law of Property Act 1925 (c.20) s.182. See thereon Lewin (14th edn), 520, 521. See further Macqueen on Husband and Wife (3rd edn), 240. Semble, a covenant by an intended wife to settle her after-acquired property, is not "usual" in a marriage settlement (*Re Maddy* [1901] 2 Ch. 820).

In a re-settlement of entitled estates, semble, a name and arms clause (see NAME) is not "usual" (*Craven v York*, 101 L.T. 327).

In an open contract to sell a lease, and even where the liability of the lessee to deliver in a good repair is excluded in the case of "fire", it is not "usual" further to restrict such liability by adding the words "or other casualty" (*Crosse v Morgan*, 60 L.T. 703).

As to when it is "usual" for a jury to allow interest, see *Toronto Railway v Toronto* [1906] A.C. 117. Cp. CERTAIN TIME; DEMAND.

The phrase in an agreement, "I assume . . . that the usual conditions of acceptance apply", is meaningless (*Nicolene v Simmonds* [1953] 1 Q.B. 543).

"Usual and proper" books of account: see BUSINESS TRANSACTIONS.

See PROPER; USUALLY.

USUAL ACCOUNT. Usual account, by, and as against, a mortgagee in possession: see *Mayer v Murray*, 8 Ch. D. 424; Fisher, ss.1764, 1765.

USUAL AND CUSTOMARY MANNER. "Where by the terms of a charterparty the ship is to 'deliver' the cargo 'in the usual and customary manner', the obligation which attaches is only that the merchant and shipowner shall each use reasonable despatch in performing his part, and there is no implied contract that the discharge shall 'at all event' be performed in the time usually occupied at the particular port. Therefore, where, owing to a threatened bombardment, the authorities at the port of discharge refused for several days to allow the discharge of cargo to proceed, so that during those days neither party to the contract could perform his part of the contract, it was held that the loss from delay must fall on the shipowner" (1 Maude & P. 409, citing *Ford v Cotesworth*, L.R. 4 Q.B. 127; 5 Q.B. 544; *Cunningham v Dunn*, 3 C.P.D. 443; *Ralli Bros v Compania Naviera, etc.* [1920] 2 K.B. 287). See further *Postlewaite v Freeland*, 5 App. Cas. 599; *Good v Isaacs* [1892] 2 Q.B. 555; *The Jaederen* [1892] P. 351; Carver (12th edn), 1245.

"Load in the usual and customary manner" seems to apply only to the mode of loading when the vessel has arrived at the loading berth, and to have no reference to a detention outside the loading place (1 Maude & P. 408, citing *Tapscott v Balfour*, L.R. 8 C.P. 46; per Pollock C.B., *Lawson v Burness*, 1 H. & C. 400; per Brett L.J., *Nelson v Dahl*, 12 Ch. D. 588; see also *Kay v Field*, 8 Q.B.D. 598; 10 Q.B.D. 241; *The Alne Holme* [1893] P. 173). See further *Arday SS Co v Weir* [1905] A.C. 501, cited CARGO.

See CUSTOMARY; DEMURRAGE; but see USUAL DESPATCH.

USUAL

USUAL AND MOST APPROVED WAY. A compliance with a covenant to work mines “in the usual and most approved way” will not exonerate from responsibility on other grounds for letting down the surface (*Davis v Treharne*, 6 App. Cas. 460); see **SURFACE**.

USUAL BUSINESS. As to what is the “usual business of an hotel and tavern”: see *Simpson v Westminster Palace Hotel Co*, 29 L.J. Ch. 561.

USUAL CERTIFICATE. “Usual certificate”, in a patent action: see *Bovill v Hadley*, 17 C.B.N.S. 435.

USUAL CLAUSES. See **USUAL**.

USUAL COLLIERY GUARANTEE. This phrase, in a charterparty and as determining the time for the commencement of loading, means the guarantee in use at the place where the contract is to be performed (*Shamrock SS Co v Storey*, 81 L.T. 413); such a **COLLIERY GUARANTEE** being an engagement by a colliery proprietor as to the time in which and the conditions under which he will load a ship with coal.

USUAL COVENANTS. See **USUAL**.

USUAL DESPATCH. “Where charterers contracted to load a cargo of coals on board ‘with usual despatch’, it was held that they were bound to load the vessel with the usual despatch of persons who have a cargo ready for loading at the port; and that they were liable for a delay caused by a severe frost which rendered unnavigable the canal along which the coals were to be brought” (1 Maude & P. 317, citing *Kearon v Pearson*, 31 L.J. Ex. 1; see also *Adams v Royal Mail Steam Packet Co*, 28 L.J.C.P. 33). But see **USUAL AND CUSTOMARY MANNER**; **CUSTOMARY**. See further *Ardan SS Co v Weir* [1905] A.C. 501, cited **CARGO**.

“To be loaded with the usual despatch of the port”: see *Ashcroft v Crow Co*, L.R. 9 Q.B. 540; see hereon *Postlethwaite v Freeland*, 5 App. Cas. 599; *Elliot v Lord*, 52 L.J.P.C. 23.

USUAL FORM. A transfer of a share in a company was held to be in the “usual common form”, although it did not give the address of the transferor or the denoting number of the share, both particulars being known to the directors and being, in the circumstances, wholly immaterial; for the requirement only means that “in everything which is material the transfer must be in the usual common form” (per Buckley J., *Re Letheby & Christopher* [1904] 1 Ch. 815).

USUAL MEDICAL ATTENDANT. In effecting a life policy, “usual medical attendant” implies more than one attendance and means the medical man best acquainted by experience with the constitution of the proposed life; therefore, if the person has been attended by a medical man for several years in serious disorders and afterwards takes another who has only seen him once or twice, the giving the name of the latter as his “usual medical attendant”, without mentioning the circumstances under which he was attended by the other, is a wrong answer and will vitiate the policy (*Huckman v Fernie*, 7 L.J. Ex. 163). See further *Morrison v Muspratt*, 4 Bing. 60.

See **MEDICAL**; **FAMILY PHYSICIAN**.

USUAL PLACE OF ABODE. A clause of forfeiture in case of the devisee not making the mansion-house “his usual common place of abode and residence”, is not void for uncertainty (*Wynne v Fletcher*, 24 Bea. 430). See **RESIDE**.

“Last or most usual place of abode” (Summary Jurisdiction Act 1848 (c.43) s.1): see *R. v Smith*, L.R. 10 Q.B. 604; **LAST**.

“Place of abode”: see **PLACE**.

USUAL PLACE OF DISCHARGE. See per Buckley L.J., *Leonis SS Co v Rank* [1908] 1 K.B. 499, cited *ARRIVE*.

USUAL PLACE OF RELIGIOUS WORSHIP. By s.32 of the Turnpike Roads Act 1822 (3 Geo. 4, c.126), persons “going to or returning from his, her, or their usual place of religious worship, tolerated by law on Sundays”, were exempted from turnpike toll; a Primitive Methodist minister had assigned to him the Sunday and other services of a district comprising the parish of F; the days on which, and the places at which, he was to attend were fixed at regular quarterly meetings of the Methodists and printed on a “plan”; according to this plan the minister had to preach at F on three Sundays each quarter, and elsewhere on other Sundays; held, that in going to F, on the Sundays indicated in the plan, to conduct the services there, the minister was going to his “usual place of religious worship”, within the exemption (*Smith v Barnett*, L.R. 6 Q.B. 34; see further *Lewis v Hammond*, 2 B. & Ald. 206, cited *PAROCHIAL CHURCH*). The fact of the carriage being driven by another person than the minister would not, semble, subject the carriage to toll (28 J.P. 735; *Layard v Ovey*, L.R. 3 Q.B. 415).

See *PUBLIC RELIGIOUS WORSHIP*.

USUAL POWERS. See *USUAL*.

USUAL PROFESSIONAL CHARGES. See *PROFESSIONAL CHARGES*.

USUAL RENT. “Usual RENT” generally means, usual with reference to the subject-matter of the demise (*Doe d. Newnham v Creed*, 4 M. & S. 371, cited *MOST RENT*).

See *ANCIENT RENT*.

USUAL TENANT’S RATE. Union Assessment Committee Act 1862 c.103 s.15): see *Slaytor v Newcastle-upon-Tyne Assessment Committee* [1926] 1 K.B. 172.

“Usual tenant’s rates and taxes” (Parochial Assessment Act 1836 (c.96)): see *Piggott v Cuckfield Union Assessment Committee* [1921] 2 K.B. 647.

USUAL WAY. “Any dispute to be settled by arbitration here, in the usual way”: see *Cooper v Jessop*, 43 Sc. L.R. 517; “in London, in the usual way”: see *Robertson v Brandes*, 43 Sc. L.R. 635.

“On death of partner the assets to be valued either by mutual agreement or valuation in the usual way”: see *Horden v Horden*, 80 L.J.P.C. 15. Cp. *USUAL AND MOST APPROVED WAY*.

USUALLY. A power to lease such lands as “theretofore usually demised”, or “so as such or more rent shall be reserved as the same lands are now let at”, will not as a rule apply to lands not previously leased (Watson Eq. (2nd edn), 868). “The words ‘usually or accustomably demised’ may have two senses; the one signifying the frequent or repeated act of leasing; the other, the common continuance of land in lease, though it has not been more than once demised, as in the case of lands leased for 500 years long since. And this is the more common acceptation of the words ‘usually demised’; though, in a literal sense, land once let is not land usually demised. Land twice demised is clearly included in that term” (Platt, 411, 412, citing *Tustian v Roper*, Jo. T. 27; Vaugh. 28); “though lands let by virtue of a contract from year to year for three years cannot be said to be usually demised, because it is but one lease, though renewable every year” (1 Platt 411, 412, citing 2 Ro. Ab. 262, pl. 14; see further Sug. Pow. (8th edn), 730–732).

“Upon the construction of the words ‘usually demised’, it has been determined that they embrace every species of demise—at will, from year to year, or for years, or lives, and whether granted by parol or by deed, by copy of court-roll, covenant to

USUFRUCTUARY

stand seised, or any other instrument; but whatever the instrument, it must operate as a lease in the sense of the term 'demise' in the given power" (Sug. Pow. (8th edn), 730, and cases there cited).

Rights "usually enjoyed": see PASTURAGE. "Usually held and enjoyed": see HELD.

"Usually occupied therewith" (s.10(2) of the Settled Land Act 1890 (c.69); see Settled Land Act 1925 (c.18) s.65(1)) applies only to "lands (if any)", and not to "pleasure grounds and park" (*Pease v Courtney* [1904] 2 Ch. 503, cited PARK). Cp. THEREWITH.

"Usually rated" (Highway Act 1835 (c.50) s.27) meant such premises as had been usually actually rated in the parish for which the rate was made (*R. v Rose*, 6 Q.B. 153), in which case "rated" was kept to its literal meaning as distinguished from "rateable". See further *R. v Randall*, 4 E. & B. 564.

"Usually sold" (Bread Act 1836 (c.37) s.4) referred to the usage at the date of the statute (*Aerated Bread Co v Grigg*, L.R. 8 Q.B. 355, cited FRENCH BREAD).

USUFRUCTUARY. "One that hath the use and reaps the profit of anything" (Cowel).

USURPATION. "Usurpation hath two significations in the common law: one, when an estranger that no right hath presenteth to a church, and his clerke is admitted and instituted, hee is said to bee an usurper, and the wrongful act that he hath done is called an usurpation.

"Secondly, when any subject doth use, without lawfull warrant, royal franchises, he is said to usurpe upon the king those franchises" (Co. Litt. 277B).

See hereon Phil. Ecc. Law (2nd edn), 345–350. Cp. INTRUSION.

USURPED POWER. "'Usurped power' may have a great variety of meanings according to the subject-matter" (per Wilmut C.J., *Drinkwater v London Assurance*, 2 Wils. 363); in an exception to a fire policy of "invasion by foreign enemies, or any military or usurped power", it means "an invasion of the kingdom by foreign enemies to give laws and usurp the government thereof, or an internal armed force in rebellion assuming the power of government and making laws and punishing for not obeying those laws" (per Bathurst J., *ibid.*); it was accordingly there held (Gould J. dissenting) that a tumultuous and destructive rising by a mob to reduce the price of provisions, was not a "usurped power" within the exception. See hereon *White, etc. Ltd v Eagle, Star & British Dominions Insurance Co*, 38 T.L.R. 615; see also WAR.

The test for "usurped power" when these words are used in an exception clause in an insurance policy is whether acts amount to constructive treason, not whether acts amount to rebellion or are the acts of a de facto government. In Beirut in January 1976 there was usurpation of power consisting of arrogation, to and by the mob, of law making and enforcing powers properly belonging to the sovereign state. Those taking part had a sufficiently warlike posture, organisation and universality of purpose to constitute them an usurping power, and the exception therefore applied (*Spinney's Centres and Doumet v Royal Insurance Co* [1980] 1 Lloyd's Rep. 406).

Cp. CIVIL COMMOTION.

USURY. "'Usury' is a gaine of anything above the principall, or that which was lent, exacted only in consideration of the loane whether it bee corne, meat, apparell, wares, or such like, as money" (Termes de la Ley, which see for remarks on 13 Eliz., c.8).

The statutes against usury were repealed by Usury Laws Repeal Act 1854 (c.90), which gives a list of them. See hereon Bellot & Willis, on Unconscionable Bargains with Money Lenders. See MONEYLENDER.

See ASSURANCE.

UTENSIL. “‘Utensil’, anything necessary for our use and occupation; household stuffe” (Cowel).

“By a devise of all utensils, it is agreed that plate and jewels do not pass” (Touch. 447, citing *Dame Latimer’s Case*, 1 Dyer, 59 b, pl. 15; see also Wms. Exs. (13th edn), 628). See further *Fitzgerald v Field*, 1 Russ. 427, cited IN OR ABOUT.

Trade fixtures (removable if belonging to the tenant: *Elwes v Maw*, 2 Sm. L.C. 182, cited FIXTURES) demised with a paper mill and used in the manufacture of paper, were held not “utensils” within s.27 of the Paper Duties Act 1794 (c.20), whereby “the paper . . . and all the materials and utensils for the making thereof”, in the custody of a paper maker, became liable to the (abolished) paper duty (*Att-Gen v Gibbs*, 3 Y. & J. 333).

UTILITARIAN PURPOSES. A bequest to be applied to “utilitarian purposes” is void for uncertainty (*Re Woodgate*, 2 T.L.R. 674).

UTILITY. “‘Utility’, in patent law, does not mean either abstract utility, or comparative or competitive utility, or commercial utility. It was described by Grove J., in *Young v Rosenthal* (1 Pat. Ca. 29, 34), as meaning an invention ‘better than the preceding knowledge of the trade as to a particular fabric’. I adopt this definition if ‘better’ be understood as meaning better in some respects and not, necessarily, better in every respect; so that, e.g. an article which is good though not so good as that previously known but which can be produced more cheaply by another process, is better in that it is better in point of cost although not so good in point of quality” (per Buckley J. *Welsbach Co v New Incandescent Co* [1900] 1 Ch. 843).

See GENERAL UTILITY; PUBLIC UTILITY; cp. USEFUL.

UTILITY PROJECT. Stat. Def., s.72D of the Insolvency Act 1986 (c.45), inserted by s.250 of the Enterprise Act 2002 (c.40).

UTLAND. Tenemental land (Elph. 627, citing Spelm. *Inland*: Cowel).

UTMOST. “Utmost efforts” to obtain payment from principal debtor before resort to surety: see *Holl v Hadley*, 4 L.J.K.B. 126.

“Utmost endeavours to improve”, in a covenant in a lease: see *Croft v Lumley*, 6 H.L. Cas. 672.

“Utmost endeavours to continue the house open as a public-house”: see *Linder v Pryor*, 8 C. & P. 518, stated Woodf. (24th edn), 613.

See BEST ENDEAVOURS.

UTTER. To “utter” a false document is to part with it, or tender it, or use it in some way, to get money or other benefit by means of it; and it is immaterial who is to have the money or get the benefit (*R. v Shukard*, Russ. & Ry. 200; *R. v Radford*, 1 Den. 59; *R. v Ion*, 21 L.J.M.C. 166).

Forgery Act 1913 (c.27) s.6(2): the posting of a letter containing a forged document is an uttering within the subsection at the place where the document was posted (*R. v Owen* [1957] 1 Q.B. 174).

As to uttering counterfeit, base, or foreign coin: see Coinage Offences Act 1861 (c.99) ss.9–16, 20–23, 30. The phrase in these sections was “tender, utter, or put off”; but though that seems to show that to “tender” was not to “utter”, yet it was always determined that an allegation of “uttering and putting off” was satisfied by evidence of

UTTER

the tender of the coin (*R. v Welsh*, T. & M. 409). In *R. v Page* (8 C. & P. 122), Abinder C.B. held that to give away counterfeit coin was not a criminal uttering; but that ruling was questioned in *R. v Anon.* (1 Cox C.C. 250), in which last case the actual decision was that it was a criminal uttering for a man to give counterfeit coin to a woman as her payment for letting him have connexion with her. See further as *R. v Page*, *R. v Ion*, 2 Den. 484. See COUNTERFEIT COIN.

“Utter” (Coinage Offences Act 1936 (c.16) s.5(3)). To “Utter” a counterfeit coin, within the meaning of this section, it is necessary to pass it or to try to pass it as genuine (*Selby v DPP* [1972] A.C. 515). It was held that “utter” includes sale (*R. v Walmsley* (1978) 67 Cr.App.R. 30).

Stat. Def., Forgery Act 1913 (c.27) s.6.

UTTER BARRISTER. Member of the utter or outer Bar, because he sat “uttermost” on the forms which constituted the bar during a moot: Waterhouse’s *Fortescutus Illustratus*, 544.

UTTERLY VOID. See VOID.

V

VACANT. Bona vacantia are goods which belong to the first occupier or finder, being those “in which no one else can claim a property” (1 Bl. Com. 298). See BONA. See hereon *Dyke v Walford*, 5 Moore P.C. 439, cited *Re Barnett* [1902] 1 Ch. 847; *Re Bell*, 52 S.J. 600; *Cunnack v Edwards* [1896] 2 Ch. 679, and *Braithwaite v Att-Gen* [1909] 1 Ch. 510, both cited PUBLIC CHARITY.

The site of old buildings recently pulled down (the rights attaching to which buildings were properly reserved), was not “vacant ground” as read into Metropolis Management Act 1862 (c.102) s.75 (*Auckland v Westminster Board of Works*, 7 Ch. 597; see hereon *Barlow v St. Mary Abbots*, 27 Ch. D. 362; 11 App. Cas. 257; *Gilbart v Wandsworth Board of Works*, 60 L.T. 149); *secus*, of a forecourt or back garden not part of the actual site of the old buildings which had been pulled down when an intention was shown not to rebuild on their site (*London CC v Pryor* [1896] 1 Q.B. 465). See also *Lawson v Wilkie*, 34 Sc. L.R. 455, cited BACK GREEN. See EMPTY; OCCUPATION.

“Vacant possession” to be given on completion, in a vendor and purchaser contract, means actual, or physical, possession, as distinguished from merely letting the purchaser into the receipt of the rents and profits: see POSSESSION.

Vacant possession is not given if sacks of cement are left by the vendor in the cellar of the property sold, so rendering the cellar unusable (*Cumberland Consolidated Holdings Ltd v Ireland* [1946] K.B. 264).

“Vacant possession” in an advertisement for the sale of property means more than empty and unoccupied; the property must be capable of occupation by a purchaser (*Topfell v Galley Properties* [1979] 1 W.L.R. 446).

VACANT DWELLING. Stat. Def., “a dwelling in which no one lives and which is substantially unfurnished” (Local Government Finance Act 1992 (c.14) Sch.2 para.18A(3) as inserted by Local Government Act 2003 (c.26) s.85). (It may, of course, be difficult to establish whether a place is a “dwelling”, so as to attract this definition, if nobody is living there and it is not furnished—but see s.3 of the 1993 Act.)

VACARIA. “A void place, or waste ground” (Jacob).

Cp. VACCARIA.

VACATE. A building society’s statutory receipt would “vacate the mortgage, or further charge, or debt” (Building Societies Act 1874 (c.42) s.43), i.e. it discharged the security so entirely that (in the absence of fraud, see *Lloyd’s Bank v Bullock* [1896] 2 Ch. 192), the society could not re-open the account, even though a good deal too little had been paid by its borrowing member (*Harvey v Municipal Building Society*, 26 Ch. D. 273; *London, etc. Building Society v Angell*, 65 L.J.Q.B. 194; but see *Farmer v Smith*, 28 L.J. Ex. 226; *Sparrow v Farmer*, 28 L.J. Ch. 537). See also Law of Property Act 1925 (c.20) s.115(9).

VACATING DIRECTORS. See DIRECTOR.

Where the articles of a company provide that a director vacates his office if he be absent for a stated period, that does not include an involuntary absence, e.g. one caused by illness; the more reasonable construction is that the absence must be voluntary or deliberate (per Wright J., *Re London & Northern Bank* [1900] W.N. 114).

In *Re London & Northern Bank* however, the actual words were, if the director "absents himself", and, in a subsequent claim in the same liquidation, Wright J. said, "In the construction of an article like this, it has been held that the expression 'absents himself' means something more than 'is absent'"; and, construing the phrase "involuntary absence", the learned judge held that it did not include a case where a director had "physically and medically an option to attend or not", e.g. "if he were afraid that it might be injurious to his health to stay in England, that does not oblige him to go abroad" (*Re London & Northern Bank, McConnell's Case* [1901] 1 Ch. 728). The period of absence does not begin to run until there is a board meeting which the director ought to have attended (*Re London & Northern Bank*). See further *Kershaw v Shoreditch*, 95 L.T. 55, cited ABSENT.

The provision—e.g. in Companies Act 1862 (c.89) Table A art.57 (see now Companies (Alteration of Table A, etc.) Regulations 1984 (No.1717))—for vacating the office of director operates automatically and ipso facto as soon as the event occurs, and disqualifies for the term for which the director has been elected, but does not disqualify him for re-election, unless the disqualifying event be of a continuing kind as distinguished from one that has been completed (*Re Bodega Co* [1904] 1 Ch. 276, distinguishing *Turnbull v West Riding Athletic Club*, 70 L.T. 92).

VACATION. The statute 28 Hen. 8 (c.11) s.3, which gives the profits of every benefice "during vacation" to the next incumbent, meets only "the case of a living actually vacant, vacated either by death, by resignation, or by deprivation", and does not apply to a living "voidable and perhaps actually void, yet not in fact vacant, the rector still continuing in possession" (*Halton v Cove*, 1 B. & Ad. 538).

"Time of vacation" of the courts, held to mean such time as the court is not sitting (*Walsh v Grier*, Ir. Rep. 4 Eq. 303; *Blake v Blake*, 8 Ir. Rep. 505). See hereon R.S.C. Ord.64.

VACCARIA. "By *vaccaria* in law is signified a dairy-house, derived of *vacca*, the cow. In Latin it is *lactarium*, or *lactitium*; and *vaccarius* is mentioned in Domesday" (Co. Litt. 5B). Also "a house to keep cows in" (Cowel).

Co VACARIA.

VAGABOND. "'Vagabonds' are idle and unprofitable men" (Termes de la Ley).

"The idea of leading a wandering and vagabond life is not now at all an ingredient in the description of a rogue and vagabond", within the Vagrancy Act 1824 (c.83) (per Cleasby B., *Monck v Hilton*, 46 L.J.M.C. 168). It seems to have lost that meaning as long ago as the time of Richard 2 (see FAITOUR); so Cowel says "'vagabond' is one that wandreth about, having no certain dwelling; rogues, vagabonds, and sturdy beggars are all one"; they are all classed in the definition clause, s.5 of 14 Eliz., c.5.

See ROGUE AND VAGABOND.

VAGUE. An assignment or contract is not "vague" merely because it is indefinite, or uncertain, or very wide in its terms; "vague", in this connection, means that which is incapable of being ascertained when the instrument comes to be enforced.

Language has been used with regard to assignments of, and contracts relating to, future property "which tends to confuse the idea of vagueness in the contract itself, with that sort of necessary uncertainty which, at the time when the contract is made, is

more or less involved in the idea of futurity. 'Vagueness' is a misleading term. A contract may be too vague 'in itself' to be understood; and on that ground it is enforceable neither at law nor in equity. But in the case of a contract to assign future property when the money has been paid, if, when at the time of the contract coming to be enforced, the property has fallen into the possession of the assignor, and is of such a character and is sufficiently ascertained to admit of the contract being enforced in equity, there is no necessary vagueness" (per Bowen L.J., *Re Clarke, Coombe v Carter*, 36 Ch. D. 348; see also *Tailby v Official Receiver*, 13 App. Cas. 523, especially judgment of Lord Herschell; *Re Kelcey* [1899] 2 Ch. 530, cited ALL). See hereon *Re Reis* [1904] A.C. 442, cited LIABILITY; PUBLIC UTILITY; RELIGIOUS; UNSEEMLY. Cp. USEFUL. See also *South Eastern Railway v Associated Portland Cement Manufacturers* [1901] 1 Ch. 12, cited PERPETUITY.

See UNCERTAIN.

VALID. If a statute makes a document "valid and binding", it is valid and binding in all its parts and no objection can be taken to it on the ground of remoteness or uncertainty (*Manchester Ship Canal Co v Manchester Racecourse Co* [1900] 2 Ch. 352). Cp. OBLIGATORY. See VOID.

"Valid as an enduring power of attorney" (Enduring Powers of Attorney Act 1985 (c.29) s.6(5)(a)). A power was "valid" within the meaning of this section if the donor understood its nature and effect, notwithstanding that at the time of its execution she was incapable, by reason of mental disorder, of managing her affairs (*Re K., Re F.* [1988] 2 W.L.R. 781).

"Will shall be valid" (Wills Act 1837 (c.26) s.9(b), as substituted by s.17 of the Administration of Justice Act 1982 (c.53)). Where a testator made a signature intending to "give effect to" his will before he made any dispositive provisions, that was a "valid" execution of a will so as to satisfy s.9(b), provided that the signing and subsequent dispositions all formed part of one transaction (*Wood v Smith* [1992] 3 All E.R. 556).

"An arbitration agreement is valid if in law it is at the relevant point in time legally binding on the parties." (*Albon v Naza Motor Trading (No.3)* [2007] EWHC 665 (Ch) at [12].)

VALID CONTRACT. As to what is a valid contract for the sale of realty so as to effect a CONVERSION, see per Jessel M.R., *Lysaght v Edwards*, 2 Ch. D. 507.

VALID LEASE. (Rent and Mortgage Interest Restrictions Act 1923 (c.32) s.2(2).) "Valid" did not mean "at a rent not more than is chargeable under the Act" (*Quinlan v Avis*, 149 L.T. 214).

VALID NOMINATION. "Valid nomination" (Municipal Corporation Act 1882 (c.50) s.56; see now Representation of the People Act 1949 (c.68) Sch.II, Local Election Rules r.13) "includes a nomination, formally valid upon the face of it, which is nevertheless a nomination of a person, in fact, disqualified for being elected" (per Kennedy J., *Hobbs v Morey* [1904] 1 K.B. 74, abbreviating definition of Lord Watson in *Pritchard v Bangor*, 13 App. Cas. 252). See *Harford v Lynskey* [1899] 1 Q.B. 582, cited CANDIDATE.

VALID NOTICE. Valid notice of increase of rent (Increase of Rent, etc. Restrictions Act 1920 (c.17) s.3(2)): see *Penfold v Newman* [1922] 1 K.B. 645. See also Rent Restrictions (Notices of Increase) Act 1923 (c.13).

VALIDITY. Vendor and purchaser summons on a matter "not being a question affecting the existence or validity of the contract" (Vendor and Purchaser Act 1874

VALUABLE

(c.78) s.9; see Law of Property Act 1925 (c.20) s.49): see *Re Jackson and Woodburn*, 37 Ch. D. 44, *Re Wallis and Barnard* [1899] 2 Ch. 515; *Re Hughes and Ashley* [1900] 2 Ch. 595, cited WAYS.

See REGULARITY.

VALUABLE. “A valuable consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit, accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.—Com. Dig. *Action on the Case, Assumpsit*, B. 1–15” (per Lush J., *Currie v Misa*, L.R. 10 Ex. 153; affirmed, 1 App. Cas. 554; cited and adopted, *Fleming v New Zealand Bank* [1900] A.C. 577).

A “valuable consideration” may be money or money’s worth; and in this connection “valuable” means real, as distinguished from a consideration that is merely illusory or nominal; but it does not mean equivalent. A debt not yet payable may be a valuable consideration (*Davies v Bolton* [1894] 3 Ch. 678).

“Valuable and sufficient consideration” (Finance Act 1965 (c.25) s.52(4)(b), now Income and Corporation Taxes Act 1970 (c.10) s.248(5)(b)) connoted a payment which was a fair equivalent for the liability incurred by the payer. So payments made by a company to trustees to be used to pay school fees for the children of employees posted abroad, were not made for “valuable and sufficient consideration” within the meaning of the section (*Ball v National and Grindlay’s Bank* [1971] 2 W.L.R. 1129).

“Valuable and sufficient consideration” (Income and Corporation Taxes Act 1970 (c.10) s.434(1)). Where, under an arm’s length arrangement with a charitable company, a taxpayer, in consideration of the payment to him of a capital sum, covenanted to make annual payments to the company over a number of years, the capital sum was held to be “valuable and sufficient consideration” for the annuity within the meaning of this section, notwithstanding that the sole object of the arrangement was to avoid the payment of tax (*IRC v Plummer* [1979] 3 W.L.R. 689).

See BONA FIDE; GOOD; FURTHER; FULL CONSIDERATION; FRAUDULENT ASSURANCE; FULL VALUABLE CONSIDERATION.

“Valuable business premises”: a description, in particulars of sale, as “valuable business premises” of a shop which was subject to a restrictive covenant prohibiting its use for the purpose of any business other than that of a ladies’ outfitter, fancy draper and manufacturer of ladies’ clothing, was held misleading; a purchaser relying on it was accordingly released from the contract (*Hunt (Charles) Ltd v Palmer* [1931] 2 Ch. 287).

“Valuable” property, effect of the phrase in particulars of sale: see *Waddell v Woolfe*, L.R. 9 Q.B. 515.

“Other valuable things”, in a bequest construed ejusdem generis (*Cavendish v Cavendish*, 1 Cox Ch. 77); so of “things” (*Stuart v Bute*, 1 Dow, 73). See also CURIOSITY.

“Valuable consideration” (Law of Property Act 1925 (c.20) ss.77(1)(c), 205(xxi)). Where the assignee of a lease took on the liability of paying the rent and performing other obligations, thus conveying a benefit to the lessee, this was “valuable consideration” for the purposes of the Act notwithstanding that the stated consideration was only one (*Johnsey Estates v Lewis and Manley (Engineering)* (1987) 284 E.G. 1240).

“Valuable security” (Theft Act 1968 (c.60) s.20). Guidance to courts for determining by three stages whether the wide terms of this section applied to a

document was provided by the Court of Appeal. The stages were: (i) to identify what the document did; (ii) then to ask whether it fell within any part of the definition of "valuable security" in s.20(3); (iii) if it did then to ask, bearing in mind the wide terms of s.20(2), whether, in respect in which the document was a valuable security, it had been executed.

A clearing house automated payment service is a "valuable security" within the meaning of s.20 (*R. v King* [1991] 3 W.L.R. 246).

"Valuable consideration": Stat. Def., excluding marriage consideration and nominal consideration in money, s.132(1) of the Land Registration Act 2002 (c.9).

Rights or interests "subsisting and valuable": see RIGHTS.

"Valuable THING" deposited on a gaming contract: see DEPOSIT.

VALUABLES. "Valuables" in Innkeepers' Liability Act 1863 (c.41) s.1, held not to include a fur coat: see *Cryan v Hotel Rembrandt*, 41 T.L.R. 287.

VALUATION. "An arbitration is a proceeding conducted according to judicial rules, and the arbitrator hears the parties and their evidence. A valuation is a proceeding in which a person specially skilled in the subject-matter decides solely by the use of his eyes and his knowledge" (per Esher M.R., *Re Dawdy and Hartcup*, 15 Q.B.D. 426).

"As between landlord and tenant, a valuation involves balancing, on one side, the payment due from the tenant for dilapidations, and on the other side, sums from the landlord to the tenant for tenant right and so forth" (per Tucker L.J., *Oades v Spafford* [1948] 2 K.B. 74).

The valuation of a life interest brought into hotchpot should be an actuarial valuation of it at the time when it first took effect (*Re Heathcote* [1891] W.N. 10, considered in *Re West* [1921] 1 Ch. 533; followed in *Re Thomson Settlement Trusts* [1953] Ch. 414).

In Valuation (Metropolis) Act 1869 (c.67) s.45, "valuation list for the time being in force" meant "that, after the time when the valuation list is to come into force according to the preceding section and until the moment when the next valuation list has come into force, the valuation list shall be deemed to have been duly made" (per Channell J.), and therefore on an application for a distress warrant for rate, the justices cannot inquire whether the valuation list, was or was not, duly made (*Westminster v Army & Navy Auxiliary Supply* [1902] 2 K.B. 133).

"Valuation list in force", in Metropolitan Water Board (Charges) Act 1907 (c. clxxi) s.13(1): see *Metropolitan Water Board v Phillips* [1913] A.C. 86.

"Valuation, imperfect or erroneous": see IMPERFECT.

See APPRAISEMENT; FAIR VALUATION; PRICE; TRAMWAY.

VALUE. In a covenant to pay rent "either in gold sterling or Bank of England notes to the equivalent value in gold sterling" the word "value" was held to denote nominal value, and not the value of gold coins regarded as a commodity (*Tresidder-Griffin v Co-operative Insurance Society* [1956] 2 Q.B. 127).

The "value" of a security, in a proof of debt, means "a positive value; a sum upon payment of which the trustee can redeem the security" (per Collins L.J., *Re Piers*, cited INADVERTENCE).

"Value" of a ship (Merchant Shipping Act 1854 (c.104) s.504) meant what she would have fetched if sold immediately before the collision, without deducting costs of sale (*Leycester v Logan*, 6 W.R. 849; see hereon *Grainger v Martin*, 2 B. & S. 456).

This limitation of a shipowner's liability is now regulated by the ship's tonnage (Merchant Shipping Act 1894 (c.60) s.503; see *Cooper v M'Kenzie*, 43 Sc. L.R. 416).

"Value of the undertaking" (Finance Act 1927 (c.10) s.55(1)(A)(i)) meant the gross and not the net value (*Gomme (E.) v Commissioners of Inland Revenue* [1964] 1 W.L.R. 1348).

"Value" (Finance Act 1965 (c.25) Sch.6 para.4(1)(a)) means market value, so that where the cost of the acquisition of certain assets was satisfied by the issue of new shares in the acquiring company, the acquisition "value" was the middle market price when the shares were first quoted on the Stock Exchange, and not the price at which they were nominally issued (*Stanton v Drayton Commercial Investment Co* [1980] 3 All E.R. 221).

In Poaching Prevention Act 1862 (c.114) s.2, the "value" of game to be restored to an innocent person from whom it has been seized by a police officer purporting to act under the section, is the value at the time when it ought to be restored to the person from whom it was seized, (e.g. on the termination in his favour of proceedings taken against him), and not its value at the time of the seizure: see *Stowe v Benstead* [1909] 2 K.B. 415.

The "value" of a house to which regard must be had by the local authority under s.39(1) of the Housing Act 1957 (c.56), when considering whether notices should be served under ss.9(1A) and 11(1)(3) requiring the landlord to render it properly fit for habitation, is its open market value (*Inworth Property Co v Southwark LBC* (1977) 34 P. & C.R. 186), and in assessing this the potential value with vacant possession may be considered (*Hillbank Properties v Hackney LBC* [1978] Q.B. 998; *Dudlow Estates v Sefton Metropolitan BC* (1979) 249 E.G. 1271).

"Wholesale value of any goods" (Finance (No.2) Act 1940 (c.48) s.21(1)) is the "open market value" at the time of delivery to the buyer having due regard to every element of value at such time, including an increase in value attributable to copyright protection (*J&C Moores v Customs and Excise Commissioners* [1963] 1 All E.R. 582).

"For value" (Bills of Exchange Act 1882 (c.61) s.29(1)(b)). The holder of a cheque, who had received it as indorsee from the payee in payment of an antecedent debt smaller than the amount of the cheque, and in anticipation of future debts, took it "for value" within the meaning of this section (*MacKenzie v Buono*, *The Times*, July 31, 1986). See also HOLDER IN DUE COURSE.

"Transfer of value" (Finance Act 1975 (c.7) s.20(4)). Where trustees of a discretionary settlement agreed to allow valuable paintings to go into the custody of a connected person, but one excluded from the beneficial interest, and then appointed a life interest in them to a beneficiary, there had been a "transfer of value" within the meaning of this section (*IRC v Macpherson* [1988] 2 W.L.R. 1261). See also ASSOCIATE.

"The value of the land" (Land Compensation Act 1961 (c.33) s.5(4)) includes both the open market value and compensation for disturbance (*Hughes v Doncaster BC* [1991] 2 W.L.R. 16).

"Value" in an insurance policy did not mean market value and the proper measure of indemnity depended on the facts and circumstances (*Keystone Properties v Sun Alliance and London Insurance* (1993) S.C. 494).

For the construction of an undefined reference to value in the Lands Clauses Consolidation Act 1845, see *Waters v Welsh Development Agency* [2004] 1 W.L.R. 1304 at 1309, HL per Lord Nicholls.

“In favour of the tenants’ construction it can be said that, if it had been intended that the schedule of dilapidations should include binding estimates of the costs of repair, it would have been more natural to use the expression ‘costs of repair’ rather than ‘value’; that would have made it clear that the schedule was intended to include estimates of cost and that those estimates were to be used to determine how the breach of the tenants’ obligations in articles Fifth and Sixth was to be quantified, subject to a right to challenge individual items. ‘Value’, however, is a word of more general signification than ‘cost’. Moreover, the purpose of the relevant part of article Twelfth is to deal with breaches of other clauses by the tenants. In that context, we are of opinion that the use of the word ‘value’ can be taken to indicate that the schedule of dilapidations is not an end in itself but a means to an end, namely the ascertainment of what is required to put the landlords in the position that they would have been in if the tenants had fulfilled their obligations under articles Fifth and Sixth.” (*Grove Investments Ltd v Cape Building Products Ltd* [2014] ScotCS CSIH 43.)

Value of tramway, etc.: see TRAMWAY.

“Assignee for value”: see ASSIGNEE.

Stat. Def., Social Security and Housing Benefits Act 1982 (c.24) s.29.

See ANNUAL VALUE; CLEAR; FULL VALUE; FREE LAND; GROSS; INVOICE VALUE; MARKET VALUE; NET; PRICE; PRINCIPAL VALUE; PURCHASE FOR VALUE; SHIPPING VALUE; SIMILAR; WORTH; DAMAGED VALUE; FAIR MARKET VALUE; FAIR VALUE; FREE YEARLY; SUBJECTIVE VALUE.

For an extensive list of earlier authorities see Stroud’s Judicial Dictionary, 5th edn.

VALUE (OF PRIZE). Stat. Def., Betting and Gaming Duties Act 1981 s.23(5) inserted by Finance Act 2006 s.11.

VALUE ADDED TAX. See Finance Act 1972 (c.41) Pt 1.

VALUE OF THE SHIP AND FREIGHT. “Whatever is on board a ship for the object of the voyage and adventure on which she is engaged, belonging to the owners, constitutes a part of the ship and her appurtenances, within the meaning of Hackney Carriages Act 1815 (c.159), s.1, whether the object be warfare the conveyance of passengers or goods, or the fishery” (per Abbott C.J., *Gale v Laurie*, 5 B. & C. 164; see also *Wilson v Dickson*, 2 B. & Ald. 2; *Cannan v Meaburn* (1824) 1 Bing 465; *Smith v Kirby*, 1 Q.B.D. 131).

See FREIGHT; VALUE.

VALUED. “Valued policy”: “In a valued policy what is valued is the subject-matter of the insurance, and not the amount of the loss. This, I think, is made clear by the Marine Insurance Act 1906 (c.41), s.27(2) and (3)” (per Atkin L.J., in *City Tailors Ltd v Evans*, 91 L.J.K.B. 379; [1922] W.C. & Ins. Rep. 58). See POLICY. Cp. UNVALUED.

Teinds “valued”: see *Speir v Willoughby de Eresby*, 28 Sc. L.R.277.

“Valued in the usual way”: see *Hordern v Hordern*, 80 L.J.P.C. 15.

See HEREAFTER VALUED AND DECLARED.

VAN. Stat. Def., para.3(3) of Sch.12AA to the Income and Corporation Taxes Act 1988 (c.1), inserted by Sch.12 to the Finance Act 2001 (c.9).

VAPOUR. For the conventional chemical distinction between “vapour” and “gas”, see *Stanley v Western Insurance*, 37 L.J. Ex. 74. See hereon *Hoare v Ritchie* [1901] 1 K.B. 434.

VARECTUM. See WARECTUM.

VARIABLE. In construing a contract which provided for a variable rate of interest it was necessary to reflect the parties’ reasonable expectations by implying a term that

VARIABLE

rates of interest be not set dishonestly, for an improper purpose, capriciously or arbitrarily (*Paragon Finance Plc v Staunton* [2002] 2 All E.R. 248, CA).

VARIABLE RATE SECURITIES. Stat. Def., Income Tax Act 2007 s.627.

VARIANCE. “‘Variance’ signifies an alteration or change of condition after a thing done. It is also used for an alteration of something formerly laid in a plea” (Cowel). Cp. ALTERATION; DEPARTURE.

Summary Jurisdiction Act 1848 (c.43) s.1: “the word ‘variance’ points at some difference between the allegation in the summons or information, and the evidence adduced in support of it” (per Crompton J., *Martin v Pridgeon*, 28 L.J.M.C. 179); accordingly, it was there held that when the evidence showed a different offence than that alleged in the summons, the justices could not convict; such a difference was not a “variance” (see also *Loadman v Cragg*, 26 J.P. 743). A “variance” would be, e.g. a misdescription, not misleading, of an employer (*Whittle v Frankland*, 26 J.P. 372), or of an ownership (*Ralph v Hurrell*, 44 L.J.M.C. 145), or of a date (*Exeter v Heaman*, 37 L.T. 535). It is clear that the word “variance” may include matters of greater importance than a defect in form: see per Alverstone C.J., in *R. v Garrett-Pegge*, 80 L.J.K.B. 614. See also *Rodgers v Richards* [1892] 1 Q.B. 555, cited SUBSTANCE.

“At variance” (Judicature Act 1873 (c.66) s.25(9); see Judicature Act 1925 (c.49) s.44); see *The Bernina*, 11 P.D. 33.

VARIATION. Variation of “property settled” (Matrimonial Causes Act 1859 (c.61) s.5; see Matrimonial Causes Act 1965 (c.72) s.17(1)(b)); see PROPERTY.

As to the variation of a tenancy by withdrawing from the letting the use of furniture, see *Seabrook v Mervyn* [1947] 1 All E.R. 295; *Stagg v Brickett* [1951] 1 K.B. 648.

“Variation, modification or development”: a pursuer is entitled to justify a verdict although the evidence shows a “variation, modification or development” of the facts averred in the closed record (*Cleisham v British Transport Commission* (1964) S.L.T. 41 (HL)).

The addition of a small amount of land to a tenancy is capable of falling within the natural meaning of a “variation” of the terms of the tenancy (*Secretary of State for Defence v Spencer*, T.L.R., October 30, 2002, Ch).

See VARY; VARIED.

VARIED. A contract is not varied by forbearance: see *Levy & Co v Goldberg* [1922] 1 K.B. 688.

(Companies Act 1929 (c.23) Sch.I Table A para.3; see Companies Act 1985 (c.6) s.127.) Rights attached to a class of shares of a company are not “varied” merely by being affected by changes in other classes of shares (*Greenhalgh v Arderne Cinemas* [1945] 2 All E.R. 719). An increase in capital does not affect, modify or vary the rights of other shareholders so as to make their consent by extraordinary resolution necessary (*White v Bristol Aeroplane Co* [1953] Ch. 65; *Re John Smith’s Tadcaster Brewery Co* [1953] Ch. 308).

(Finance Act 1941 (c.30) s.25(1); see Income and Corporation Taxes Act 1970 (c.10) s.422.) Where a provision for the payment of a stated sum free of income tax made before September 3, 1939, was confirmed after that date by deed (*Dudley v Dudley* [1944] K.B. 264, and see *Re Sebag-Montefiore* [1944] Ch. 331), the provision was not “varied” but was subject to the section. Where a codicil increased a tax-free annuity given by the will the original amount was treated as not “varied”, and therefore subject to the section, but the additional amount was treated as the subject of

a separate provision, not subject to the section (*Re Sebag-Montefiore*, above). It is now clear (*Berkeley v Berkeley* [1946] A.C. 555) that the provision in such a case is not “made” until the death of the testator.

An agreement for a temporary reduction in the amount of an annuity was held not to “vary” it for the purposes of this section (*Re Cobbold’s Separation Deed*, 111 L.J. Ch. 276).

“Varied . . . within . . . 28 days” (Courts Act 1971 (s.23) s.11(2)). Where a judge in altering a bankruptcy order exercised his inherent jurisdiction to remedy a mistake he had not “varied” the order within the meaning of s.11(2) (*R. v Saville* [1980] 1 All E.R. 861).

See EXPRESSLY VARIED.

VARIETY. See ENTERTAINMENT.

See PLANT VARIETY.

VARIETY ACT. See *Heythrop Zoological Gardens Ltd (t/a Amazing Animals) v Captive Animals Protection Society* [2016] EWHC 1370 (Ch).

VARY. The power to “vary” investments given by the concluding words of Trust Investment Act 1889 (c.32) s.3 (see Trustee Act 1925 (c.19) s.1(1)(r)) extends to all investments whether made under the Act or not (*Hume v Lopes* [1892] A.C. 112, cited TRUST FUNDS).

When “securities” is used in the sense of authorising purchases, e.g. of ground rents (see INVEST), then a power to “vary and transfer” securities, authorises their sale (*Re Tapp and London & India Docks Co*, 74 L.J. Ch. 523; Trustee Act 1925, s.1).

“Any arrangement . . . varying . . . the trusts” (Variation of Trusts Act 1958 (c.53) s.1(1)). An arrangement where the new trusts, although differing from the old, retained the substratum of the old trusts, could properly be described as “varying” the old trusts and could thus be approved by the court (*Re Ball’s Settlement Trusts*, *Ball v Ball* [1968] 1 W.L.R. 899). An arrangement which, when approved, revokes all prior trusts and establishes new trusts is nevertheless an “arrangement varying the trusts” within the meaning of this section. It is the arrangement which varies the trusts; not the order of the court itself (*Re Holt’s Settlement*, *Wilson v Holt* [1969] Ch. 100).

“Vary or rescind” (Increase of Rent and Mortgage Interest (Restrictions) Rules 1920 (SI 1920/1261) r.7): see *Butler v Hudson* [1953] 2 Q.B. 407.

“To . . . vary” (Matrimonial Causes Act 1950 s.28(1); Matrimonial Causes Act 1965 (c.72) Sch.1 para.9) does not include the refund of past payments to a divorced wife (*Young v Young (No.2)* [1962] P. 218). See also PROPERTY; SETTLEMENT.

“Where . . . dispositions . . . are varied” (Finance Act 1978 (c.42) s.68). There can only be one variation of a disposition. A further redirection of part of the deceased’s estate failed because it did not vary a disposition of “property comprised in his estate immediately before his death” as required by the section (*Russell v IRC* [1988] 1 W.L.R. 834).

“Rate of interest varying with profits”: see RATE.

In s.1(8) of the Crime and Disorder Act 1998, provision for the variation or discharge of an anti-social behaviour order permits extension of the period of the order (*Leeds City Council v G.* [2007] EWHC 1612 (Admin)).

“My noble friend Lord Norton of Louth made a particular reference to the term ‘vary’. It might be helpful if I add some words to the record at this stage on that point. ‘Vary’ is given its natural meaning in the Bill: the ability to amend individual definitions within Schedule 1. It does not stretch to changing the principle of an

exemption, nor to removing it. Schedule 1 exempts groups of substances; the ability to vary the definitions is important to future-proof the legislation against regulatory changes, which may change how particular substances are legally defined. It may be that a definition in the Bill is varied in the way in which it narrows its scope. However, this would be the case only if the scope of the underlying regulation was also narrowed. A similar approach has been taken in Ireland—without wanting to reopen that particular canard at this stage. Since the passing of the Criminal Justice (Psychoactive Substances) Act 2010 in Ireland, they have not needed to make any amendments to their exemption list. We therefore anticipate a stable list.” – Minister speaking in Committee in the House of Lords on the Bill for the Psychoactive Substances Act 2016.

VASSAL. In feudal times, the grantor of lands “was called the proprietor, or lord; being he who retained the dominion or ultimate property of the feud or fee; and the grantee, who had only the use and possession according to the terms of the grant, was stiled the feudatory or vassal, which was only another name for the tenant or holder of the lands” (2 Bl. Com. 53). See **VILLEIN**.

VEGETABLE FAT. Stat. Def., “means a triglyceride of vegetable origin” (Hydrocarbon Oil Duties Act 1979 (c.5) s.23C inserted by Finance Act 2004 (c.12) s.13).

VEGETARIAN. A legacy “in furtherance of the principles of food reform as advocated by the Vegetarian Societies of Manchester and London” is a good charity (*Re Slatter*, 21 T.L.R. 295, following *Re Cranston* [1898] 1 Ir. R. 431; but see *Re Hummeltenberg*, 92 L.J. Ch. 326).

VEHICLE. Generally, “vehicle” is synonymous with carriage; it includes a bicycle (*Ellis v Nott-Bower*, 13 T.L.R. 35). See also **COACH**.

In the exception from license duty given by Revenue Act 1869 (c.14) s.19(6) for a trade “waggon, cart, or other vehicle”, the word “vehicle” meant such a cart as that which a tradesman used for sending his goods from place to place (*Speak v Powell*, L.R. 9 Ex. 25, cited **TRADE**). See **CARRIAGE**.

Where a notice was served under s.47(5) of the Town and Country Planning Act 1962 (c.38) requiring the discontinuation of the use of land for stationing “vehicles”, it was held that the line between steps causing what was once a vehicle to cease being a vehicle was sensibly drawn somewhere between the removal of the wheels and the removal of the chassis (*Backer v Uckfield RDC* (1970) 68 L.G.R. 596).

Name and address of a seller of milk in a highway, to be on the “vehicle” or “can” (Milk and Dairies, etc. Act 1915 (c.66) s.6): see *Crabtree v Skelton*, 70 L.J.K.B. 560.

“Vehicle” in an accident insurance policy includes a bicycle: see *Hainsford v London Express Newspapers Ltd*, 44 T.L.R. 349; see also *Harper v Associated Newspapers Ltd*, 43 T.L.R. 331.

“Vehicle constructed or adapted for use solely for conveyance of goods” (Customs and Inland Revenue Act 1888 (c.8) s.4): see *French v Champkin* [1920] 1 K.B. 76.

In *Dennis v Leonard*, 141 L.T. 94, the majority of the court expressed the opinion that a petrol-driven tractor was a vehicle within the meaning of Motor Cars (Use and Construction) Order 1904.

“Vehicle” (Motor Vehicles (Authorisation of Special Types) General Order 1955 art.18(1)) did not include vehicles or a combination of vehicles, so that two tractors moving the same load formed more than one vehicle (*Dixon v BRS (Pickfords)* [1959] 1 W.L.R. 301).

“Farmer’s goods vehicle” (Road Traffic Act 1960 (c.16) Sch.13 para.1; Vehicles (Excise) Act 1971 (c.10), Sch.4) includes a vehicle used for the carriage of hatching eggs in connection with the business of chick breeding (*JM Knowles Ltd v Rand* [1962] 1 W.L.R. 893).

“Vehicle” (Industrial Development Act 1966 (c.34) s.13). A trailer assembly with rear wheels only, and immovable until a tractor unit has been inserted under its front portion, is nevertheless a “vehicle” within the meaning of this section (*British Oxygen Co v Board of Trade* [1969] 2 Ch. 174).

A movable confectionery stall with tyred wheels, which was positioned in a street during the day and wheeled away at night, is a “vehicle” within the meaning of s.31 of the Road Traffic Regulation Act 1967 (c.76) and regulations made under it by a local authority (*Boxer v Snelling* [1972] Crim. L.R. 441).

“Vehicle... parts and accessories” (Motor Vehicles (Construction and Use) Regulations 1973 (SI 1973/24) reg.90(1)). A container which is “part” of a vehicle when secured does not cease to be merely because it cannot be secured due to its defective condition (*Bindley v Willett* [1981] R.T.R. 19).

A recovery vehicle towing a broken-down vehicle, where the bulk of the weight of the latter is borne by the former, is deemed to be a “vehicle itself constructed to carry a load” for the purposes of s.117(2) of the Road Traffic Regulation Act 1984 (c.27) (*DPP v Holtham* [1991] R.T.R. 5).

A vehicle used for delivering and collecting skips, including builders’ skips, was not used for “a general service performed in the public interest” (*Swain v McCaul* [1997] R.T.R. 102).

(Road Vehicles Lighting Regulations 1989 (SI 1989/1796) reg.3, Tables 4(4), 16.) A vehicle adapted for the purposes of conveying the sick was an emergency vehicle for the purposes of reg.16 of the 1989 Regulations even when the vehicle was being used for purposes other than as an ambulance when a blue light was fitted but not illuminated (*DPP v Hawkins* [1996] R.T.R. 160).

Stat. Def., “means a mechanically propelled vehicle” (Vehicle Excise and Registration Act 1994 (c.22) s.62(1)); in context of trespass, includes “any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle” as well as caravans (Criminal Justice and Public Order Act 1994 (c.33) s.61(9)); includes hovercraft (Northern Ireland (Emergency Provisions) Act 1996 (c.22) s.58); “includes any means of conveyance” (United Nations Personnel Act 1997 (c.13) s.2(3)).

Stat. Def., including aircraft, hovercraft, train or vessel, s.121 of the Terrorism Act 2000 (c.11); including any vessel, aircraft or hovercraft, s.48(8) of the Regulation of Investigatory Powers Act 2000 (c.23).

(Council Regulation 3820/85 on the harmonisation of certain social legislation relating to road transport.) The words “vehicle used in connection with... refuse collection and disposal” in art.4(6) must be interpreted as covering vehicles used for the collection of waste of all kinds which was not subject to more specific rules, and for the transportation of such waste over short distances within the context of a general service in the public interest provided directly by public authorities or by private undertakings under their control (*Criminal Proceedings against Groupil* (C39/45) and *Mrozek v Jager* (C335/94) ECJ).

“Goods vehicle”: see GOODS VEHICLE.

VENARY

“Recovery vehicle”: Stat. Def., Vehicle Excise and Registration Act 1994 (c.22) Sch.1 para.5(2).

Stat. Def., Road Traffic Act 1972 (c.20) s.68(8); Carriage of Passengers by Road Act 1974 (c.35) Schedule para.2; Customs and Excise Management Act 1979 (c.2) s.1; Road Traffic Regulation Act 1984 (c.27) s.99(5).

Stat. Def., “includes an aircraft, hovercraft, train or vessel” (Justice and Security (Northern Ireland) Act 2007 s.42).

Stat. Def., includes—(a) bicycles and other non-motorised forms of transport, and (b) hovercraft (Marine and Coastal Access Act 2009 s.147).

See CART; MECHANICAL; MOTOR.

VENARY. “Beasts of chase, or venary” (2 Bl. Com. 415): see BEASTS.

VEND. “I think the proper meaning to be attached to the word ‘vend’ is the habit of selling” (per Coleridge J., *Minter v Williams*, 5 L.J.K.B. 60, 62, on which see per Alverstone C.J., and Williams L.J., *British Motor Syndicate v Taylor* [1900] 1 Ch. 583, cited USE).

“In order that a sale may be an infringement of a patent, some material part of the transaction of sale must be done in England” (per Stirling J., *British Motor Syndicate v Taylor*, above, citing *Badische Anilin und Soda Fabrik v Basle Works* [1898] A.C. 208, cited USE). See also *Badische Anilin und Soda Fabrik v Hickson* [1905] 2 Ch. 495; affirmed House of Lords [1906] A.C. 419, cited EXERCISE, especially per Lord Davey.

An indispensable ingredient of vending is selling or offering for sale, and a coin change machine is not a “vending” machine (*R. v Maloney* (1971) 13 Cr. L.Q. 368).

See SALE; SELL.

VENDOR. In a contract of sale for “the vendor”, the vendor is not sufficiently described: see PROPRIETOR. See also *Huddlestons’ Estates* [1921] 1 Ir. R. at p.48.

Prima facie, “lessor or lessee” is not included in “vendor or purchaser”; but as that latter phrase was used at the commencement of Vendor and Purchaser Act 1874 (c.78) s.9, it included lessor or lessee, because of the relation of the section to s.2, the first rule of which applied to leases (*Re Stephenson and Cox*, 36 S.J. 287; see hereon *Re Anderton and Milner*, 45 Ch. D. 476; *Jones v Watts*, 43 Ch. D. 574, cited SALE).

“Vendor of registered land”, in Land Transfer Act 1897 (c.65) s.16(2): see *Re Voss and Saunders*, 80 L.J. Ch. 33. Cp. Land Registration Act 1925 (c.21) s.110(5).

Stat. Def., Companies Act 1948 (c.38) Sch.3 para.3, Sch.4 para.24; Finance Act 1982 (c.39) s.53; Housing Defects Act 1984 (c.50) Sch.2 para.7.

See LIEN, para.(21).

VENIAL. “*De peche est brieve division, car est mortal ou venial solonque ceo que appiert es paines.* And that crime is called mortall or corporall; mortall because it deserveth death, and such crimes are called veniall as may be redeemed or satisfied by some other punishment than by death” (Co. Litt. 287B).

See CRIME. Cp. TRIFLING.

VENIRE DE NOVO. As to when this will be granted, see *Crane v Director of Public Prosecutions* [1921] 2 A.C. 299; *R. v Dennis* [1924] 1 K.B. 867.

Means an order on the appellant to attend and take his trial again in respect of the charge that lies against him, to plead to the indictment and be tried duly according to law (*R. v Olivo* [1942] 2 All E.R. 494).

VENISON. Stat Def., Deer Act 1991 (c.54) s.16.

VENT. In a restrictive covenant or condition against the erection of buildings “with fireplaces or vents”, the ordinary meaning of “vents” is chimneys; the word does not include ventilators (*Johnston v Sawers-Mitchell*, 30 Sc. L.R. 518).

VENTILATION. “Ventilation”, in cl.13 of the Privy Council Order 1885, made under Contagious Diseases (Animals) Act 1878 (c.74) s.34(11), included air-space; therefore, a local authority regulation defining the air-space for each cow in a cowshed was valid (*Baker v Williams* [1898] 1 Q.B. 23).

Ventilation of factories and workshops: see Factories Act 1961 (c.34) s.4.

See ADEQUATE.

VENTRE. Child *en ventre*: see LIVING; BORN.

VENTURE CAPITAL TRUST. Stat. Def., Income Tax Act 2007 s.259.

VENUE. “‘Venew’ or ‘visne’ is a terme used in the statute of 35 Hen. 8, c.6, and often in our bookes, and signifies a place next to that where any thing that comes to be tryed is supposed to be done. And therefore for the better discovery of the truth of the matter in fact upon every tryall, some of the jury must be of the same hundred, or sometimes of the same parish in which the thing is supposed to be done, who by intendment may have the best knowledge of the matter. See Coke, 6 Book, 14 a, *Arundel’s Case*” (Termes de la Ley). The last sentence is curious as throwing light on the original function of the jury; but the venue is now often changed to the locality in which the matter has arisen, not because the jury may have “the best knowledge” of it, but because each locality should bear its own burdens and because the locality of the subject-matter is the place where the witnesses frequently reside.

VERBAL. A nod of assent to an oral question constitutes a verbal statement, though it may not have been an oral statement (*Chandarasekera (alias Alisandiri) v R.* [1937] A.C. 220).

Verbal directions or wishes by a testator: see WISH; cp. SECRET TRUST.

See PAROL.

VERDEROR. “‘Verderor, *Vindarius*”, is a judicial officer of the Kings forest . . . sworn to maintain and keep the assizes of the forest, and to view receive and enrol the attachments and presentments of all manner of trespasses of vert and venison in the forest, Manwood” (Cowel; see also Termes de la Ley; 3 Bl. Com. 71).

VERDICT. “‘Verdict of 12 men’. *Verdictum quasi dictum veritatis, as judicium est quasi juris dictum. Et sicut ad questionem juris, non respondent juratores sed iudices: sic ad questionem facti non respondent iudices sed juratores.* For jurors are to try the fact, and the judges ought to judge according to the law that riseth upon the fact, for *ex facto jus oritur*” (Co. Litt. 226A, B). See JURY.

A verdict is (1) general, or (2) special; general, when in criminal cases the jury say “guilty” or “not guilty”, or when in civil cases they find generally for the plaintiff or for the defendant; special, when the jury find specific facts (as distinguished from the evidence proving such facts), the court entering the judgment according to law on the facts as so found. See hereon Cowel; Jacob; 3 Bl. Com. 377, 378; 4 Bl. Com. 360, 361.

As to whether “verdict”, in County Courts Act 1850 (c.61) s.12, was limited to a verdict upon an issue joined, see *Reed v Shrubsole*, 18 L.J.C.P. 225; *Prew v Squire*, 10 C.B. 912, cited DEFAULT.

Where an agreement for arbitration of matters involving several items of claim says that the award shall be for a sum certain for the claimant, or that it shall be for the respondent, and that it shall be entered as a verdict, and that the costs shall “follow the verdict”; if the award be for the claimant he is entitled to the whole costs although the

sum awarded to him be but little more than one fourth of his claim; and the arbitrator cannot be questioned as to which items of claim he allowed and which he disallowed (*O'Rourke v Commissioner for Railways*, 15 App. Cas. 371). See EVENT; CONFORMITY.

VERGE. "Verge" (Motorways Traffic Regulations 1959 (No.1147) reg.3(1)(h)). The hard shoulder of a motorway is part of the verge and not of the "marginal strip" (reg.3(1)(a)(d)), or of the carriageway (reg.7) (*Wallwork v Rowland* [1972] R.T.R. 86). Stat. Def., Severn Bridge Tolls Act 1965 (c.24) s.22.

See CARRIAGEWAY.

VERGER. "'Vergers, *Vigatores*', are such as carry white wands before the justices of either bench, *Fleta*, lib. 2, c.38. Otherwise called *Portatores Virgæ*" (Cowel).

VERMIN. Rabbits are vermin in Australia (Vermin Destruction (Victoria) Act 1890, on which see *King v Cheyne* [1900] A.C. 622, cited SPECIAL); *secus*, as "vermin" is used in Gun Licence Act 1870 (c.57), s.7(4) (*Lord Advocate v Young* [1899] W.N. 190, disapproving *Gosling v Brown* 5 Rettie, 755). See GAME.

Stat. Def., Public Health Act 1936 (c.49), s.90(1); Public Health (London) Act 1936 (c.50), s.304; Forestry Act 1967 (c.10), s.7(5)(b).

VERT. "Whatsoever beareth green leaf, but specially of great and thick coverts" (4 Inst. 317, which see for the different kinds of vert; see also *Termes de la Ley*; Cowel).

VERTEBRATE. Stat. Def., "any animal of the Sub-phylum Vertebrata of the Phylum Chordata" (Animal Welfare Act 2006 s.1(5)).

VERTICAL. "Vertical deviation": see LATERAL.

VERTU. A bequest of "objects of vertu and taste" (or "vertu or taste") will not, *proprio vigore*, comprise pictures; especially when those words follow an enumeration such as gold and silver plate, china, etc. and where, in the same will there is another gift of "furniture", a word under which pictures are aptly included (*Re Londesborough*, 50 L.J. Ch. 9). A chain of office is an "article of vertu" (*Re Coxen, McCallum v Coxen* [1948] Ch. 747). See also ARTICLE, para.(10).

VERVACTUM. See WARECTUM.

VESSEL. "Vessel" does not include everything that floats, e.g. it does not include a raft or a wherry (*Gapp v Bond*, 19 Q.B.D. 200); nor within the meaning of the old R.S.C. Ord.19 r.3 did it include a floating landing stage permanently fixed to the riverside but capable of rising and falling with the tide: see *The Craighall* [1910] P. 207. But, in a marine insurance against collision, the word may include an anchor to which a vessel is fast, for the anchor is a portion of the vessel to which it belongs (*Re Margetts and Ocean Accident Guarantee Corp* [1901] 2 K.B. 792).

A dumb barge was a "vessel" within the exception-in Bills of Sale Act 1878 (c.31) s.4 and its assignment did not require registration as a bill of sale (*Gapp v Bond*, above). A dumb barge usually propelled by oars was still a "vessel propelled by oars" within Admiralty Court Act 1861 (c.10) s.2, when she was in tow (*The Champion* [1934] P. 1).

In Merchant Shipping Act 1894 (c.60) s.742, "'vessel' includes any ship or boat, or any other description of vessel, used in navigation"; e.g. a motor boat carrying more than 12 passengers along a river and canal (*Weeks v Ross* [1913] 2 K.B. 229). See also *The Mudlark* [1911] P. 116; *The Harlow* [1922] P. 175. It does not include any vessel propelled by oars (*Edwards v Quickenden and Forester* [1939] P. 261).

"Vessel" (Employment Protection (Consolidation) Act 1978 (c.44) s.144(2)) cannot be construed as including the plural (*Goodeve v Gilson's* [1985] I.C.R. 401).

“Vessel in navigation” (Merchant Shipping Act 1984 (c.5) s.742). “Navigation” is not synonymous with movement on water, but means planned or ordered movement from one place to another. A sailing dinghy used on a reservoir for pleasure is not “in navigation” within the meaning of this section (*Curtis v Wild* [1991] 4 All E.R. 172). Nor is a jet ski (*Steadman v Scholfield* [1992] 2 Lloyd’s Rep. 163).

Stat. Def., Dangerous Vessels Act 1985 (c.22) s.7; “includes hovercraft” (Antarctic Act 1994 (c.15) s.31(1)); “includes any ship or boat, or any other description of vessel used in navigation” (Merchant Shipping Act 1995 (c.21) s.255(1)); “includes any ship or boat, or any other description of vessel used in navigation” (Merchant Shipping Act 1995 (c.21) s.255(1)); “includes any ship, boat, barge, lighter or raft and any other description of craft, whether used in navigation or not” (British Waterways Act 1995 (c. i) s.2(1)).

“Pleasure vessel”: Stat. Def., Merchant Shipping (Fire Protection: Small Ships) Regulations 1998 (SI 1998/1011) reg.1(2).

Stat. Def., Merchant Shipping Act 1894 (c.60) s.742; Customs and Excise Management Act 1979 (c.2) s.1; Local Government (Miscellaneous Provisions) Act 1982 (c.30) Sch.3 para.5.

“Corked and sealed” vessel: see SEALED.

Stat. Def., includes—(a) hovercraft, and (b) any other craft capable of travelling on, in or under water, whether or not self-propelled (Marine and Coastal Access Act 2009 s.115).

See CHARGE OR CONDUCT; FISHERMAN; SAILING VESSEL; SHIP; SHIPS AND VESSELS; STEAM VESSEL; STEAMSHIP; COASTING VESSEL.

VEST; VESTED. “‘Vest’, in the absence of a context, is usually taken to mean vest in interest rather than vest in possession” (per Romer J., *Re Lord’s Settlement* [1948] L.J.R. 207). See also *Marks v Trustees Executors & Agency Co*, 22 A.L.J. 539. Where the trustees of a will were authorised to raise a part of the “then expectant contingent presumptive or vested share portion or legacy of any person”, and to apply the same for his benefit, the word “vested” meant vested in interest, not vested in possession (*Re Wills’ Will Trusts* [1959] Ch. 1).

As to the interest acquired by public bodies, created for a particular purpose, in works such as embankments which are “vested” in them by statute, see *Port of London Authority v Canvey Island Commissioners* [1932] 1 Ch. 446.

The herbage on roadside wastes did not “vest” in a county council by Local Government Act 1888 (c.41) s.11(6) (*Curtis v Kesteven CC*, 45 Ch. D. 504, cited *ROADSIDE WASTE*).

“All hospitals vested in a local authority” (National Health Service Act 1946 (c.81) s.6(2)). “Vested” indicates the ownership of a proprietary interest as part of the hospital undertaking. The subsection does not include a reversionary interest belonging to a local authority which was not itself carrying on a hospital or providing hospital services (*Minister of Health v Stafford Corp* [1952] Ch. 730).

Stat. Def., Finance Act 1951 (c.43) s.33(5)(b).

Property “transferred to or vested in” a purchaser: see DECREE.

See DIVEST; DESCEND.

VESTING. Vesting declaration, on the appointment of a new trustee: see Trustee Act 1893 (c.53) s.12, on which see *London & County Bank v Goddard* [1897] 1 Ch. 642, cited TRUST.

VESTMENTS

VESTMENTS. See *Ridsdale v Clifton*, 2 P.D. 276; *Elphinstone v Purchas*, L.R. 3 A. & E. 66; and *Hebbert v Purchas*, L.R. 3 C.P. 605, cited ORNAMENT; *Enraght v Penzance*, 7 App. Cas. 240. Cp. VESTURE.

VESTRY. "The primary meaning of the term 'vestry' is the place in which the minister puts on his vestments"; its secondary meaning is the room in which the parishioners are entitled to meet for parish purposes (per Erle J., *Jackson v Courtenay*, 8 E. & B. 19).

VESTURE. "'Vesture' signifies a garment; but in the law, metaphorically turned to betoken a possession, or an admittance to a possession or seisin; so it is taken in *Westm.* 2, cap. 25. And in this signification 'tis borrowed of the Feudists, with whom investiture signifies a delivery of possession by a speare or staff, and vestura possession it self" (Cowel).

See HERBAGE; VEST.

VETERINARY. "Veterinary practitioner"; "veterinary surgeon": Stat. Def., Animal Boarding Establishments Act 1963 (c.43) s.5(2).

"Veterinary surgery": Stat. Def., Veterinary Surgeons Act 1966 (c.36) s.27.

"Veterinary drug"; "veterinary practitioner"; "veterinary surgeon": Stat. Def., Medicines Act 1968 (c.67) s.132; Misuse of Drugs Act 1971 (c.38) s.37; Poisons Act 1972 (c.66) s.11.

See LICENSED MEDICAL PRACTITIONER.

VETERINARY SURGEON. Stat. Def., s.5(2) of the Protection of Animals (Amendment) Act 2000 (c.38).

VEX. "Disturb, vex, or trouble": see DISTURB.

VEXATIOUS. The action a "vexatious defence" to which was a bankruptcy offence under Bankruptcy Act 1861 (c.134) s.159 (see Bankruptcy Act 1914 (c.59) s.26(g)), was one for a debt or liquidated damages as distinguished from a tort (*Ex p. Crabtree*, 33 L.J. Bank 33).

Where the plaintiff has started proceedings in a foreign court, and has good security there, it is "vexatious and an abuse of the process of the court" to allow proceedings to continue in the English court (*The Cressington Court (Owners) v The Marinero (Owners)* [1955] P. 68).

"Where the taxing officer is satisfied that an issue has been vexatiously and improperly put on the record" he is not to allow the costs of that issue (per Sir Creswell, *Allen v Allen and D'Arcy* (1860) 2 Sw. & Tr. 107). The petition of a wife based on evidence short of the truth and containing much invention, is not necessarily "vexatiously and improperly put on the record" within the above, nor does it constitute the institution of "vexatious legal proceedings" within the meaning of the Supreme Court of Judicature (Consolidation) Act 1925 (c.49) s.51 (*Bock v Bock* [1955] 1 W.L.R. 843).

Vexatious removal of indictments into the Queen's Bench: see *R. v Manchester*, 7 E. & B. 460.

Vexatious Indictments Act 1859 (c.17): see also Administration of Justice (Miscellaneous Provisions) Act 1933 (c.36) s.2.

Vexatious actions: see Vexatious Actions Act 1896 (c.51).

See FRIVOLOUS; IMPROPER; SCANDALOUS.

VEXATIOUSLY. See UNREASONABLY.

VI, CLAM, PRECARIO. An easement to be acquired by prescription must be "nec vi, nec clam, nec precario": see hereon per Lord Selborne, *Macpherson v Scottish*

Recreation Society, 13 App. Cas. 749; *Gale* (12th edn), 214 et seq. See also per Stirling L.J., *Union Lighterage Co v London Graving Dock Co* [1902] 2 Ch. 574, citing *Dalton v Angus*, 6 App. Cas. 740; *Liverpool Corp v Coghill* [1918] 1 Ch. 307; per Farwell J., *Burrows v Lang* [1901] 2 Ch. 511; cited *PRECARIO*; *Lyell v Hothfield* [1914] 3 K.B. 916.

VIET ARMIS. See *FORCE*.

VICAR. “The priest of every parish is called rector, unless the prædial tythes be impropriated and then he is called vicar, *quasi vice fungens rectoris*” (Cowel). The status of a modern vicar was originated by 4 Hen. 4, c.12. See also *Phil. Ecc. Law* (2nd edn).

As to the vicar’s rights in church and churchyard, see judgment of Blackburn J., *Greenslade v Derby*, L.R. 3 Q.B. 421, cited *PERPETUAL CURATE*.

“The words ‘rectorial’ and ‘vicarial’ tithes have no definite signification” (Note, to 1 Bl. Com. 387).

See *CLERGYMAN*; *MINISTER*; *PARSON*; *RECTOR*.

VICAR CHORAL. A vicar choral is a minor officer of a cathedral whose duty is (as a “singing-man”) to assist in the services (*Phil. Ecc. Law* (2nd edn), 143), and is, generally, a corporation sole, and as such his personal representative is liable for *DILAPIDATIONS* of the house held by him *virtute officii* (*Gleaves v Parfitt*, 7 C.B.N.S. 838).

VICAR-GENERAL. See *Thorpe v Mansell*, 1 Hagg. Con. 4, fn. See also *R. v Canterbury (Archbishop)* [1902] 2 K.B. 503; see *CHANCELLOR*.

VICE. The inherent “vice” of a thing—damage from which is not included in the implied insurance by a common carrier or in a contract for sea carriage—means that which is, necessarily, incidental to the property, rather than occasioned by an adventitious cause such as loss by worms (*Rhol v Parr*, 1 Esp. 444), or rats (*Hunter v Potts*, 4 Camp. 203), or the self-ignition of damaged hemp (*Boyd v Dubois*, 3 Camp. 133, cited and adopted by Willes J., *Great Western Railway v Blower*, L.R. 7 C.P. 663).

“Vice”, in an animal, means “that sort of vice which by its internal development tends to the destruction or the injury of the animal or thing to be carried and which is likely to lead to such a result” (per Willes J., *Great Western Railway v Blower*, L.R. 7 C.P. 662), e.g. restiveness (*ibid.*), or fright, temper, or struggling to keep its legs per Bramwell B., *Kendall v London & South Western Railway*, L.R. 7 Ex. 373; see also per Mellish L.J., *Nugent v Smith*, 1 C.P.D. 439). A dog may be dangerous from nervousness, without being vicious (*M'Donald v Smellie*, 40 Sc. L.R. 702). “Vicious”, as applied to animals, indicates a savage disposition or propensity to attack people (*Brock v Richards* [1951] 1 K.B. 529).

See *SOUND*; *WARRANTED SOUND*; *INHERENT VICE*.

VICINAGE. “Common pur cause de vicinage”: see *COMMON*; *Cape v Scott*, L.R. 9 Q.B. 269; *Commissioners of Sewers v Glasse*, L.R. 19 Eq. 134.

VICINITY. “In the vicinity of any prohibited place” (*Official Secrets Act 1920* (c.75) s.3) means “in or in the vicinity of” the place (*Adler v George* [1964] 2 Q.B. 7).

“In the vicinity” (*Dock Works (Regulation of Employment) Act 1946* (c.22) s.6): see *National Dock Labour Board v John Bland & Co* [1971] 2 W.L.R. 1491.

“[28] The concept of vicinity is a chimera. Its definition may evolve under the impact of changing social and demographic conditions thus progressing the purpose and theme of the many authorities that deal with it.” (*Sainsbury's Supermarket Ltd v Winemark The Wine Merchants Ltd* [2012] NIQB 45.)

VICTIM. (European Convention on Human Rights 1950 art.25.) Shareholders who alleged detriment to their financial interests as a result of government measures were not “victims” within the meaning of art.25 (*Agrotexim v Greece* [1996] 21 E.H.R.R. 250).

For discussion of the question of who is the victim of a breach of human rights for the purposes of proceedings under the Human Rights Act 1998 and, in particular, how this affects the role of representative organisations, see *Director General of Fair Trading v Proprietary Association of Great Britain* [2002] 1 All E.R. 853, CA.

A National Health Service Trust cannot be a victim for the purposes of the European Convention on Human Rights art.34 (*Frame v Grampian University Hospitals NHS Trust*, T.L.R., March 2, 2004, High Court of Justiciary).

A tenant in breach of a covenant was not a victim, for the purposes of s.7 of the Human Rights Act 1998, of alleged discrimination of property legislation that granted greater protection to one class of tenant than to another (*Lancashire County Council v Taylor* [2005] EWCA Civ 284).

As to whether a member of a person’s family is a victim in relation to something done to the person for the purposes of the Human Rights Act 1998, see *Savage v South Essex NHS Trust* [2008] UKHL 74 per Lord Scott of Foscote at para.5.

“[The Human Rights Act 1998], s.7(1) provides that a person may bring a claim in respect of any act that is unlawful under s.6(1), but ‘only if he is (or would be) a victim of the unlawful act.’ S.7(7) states that ‘for the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.’ The text of Article 34 of the Convention provides no guidance as to the meaning of ‘victim’. It merely states: ‘The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.’ . . . It is clear from the decisions of the ECtHR that the Court takes a broad view for the purposes of determining whether a person is capable of claiming to be a ‘victim’ of a breach of Article 2 of the Convention. The Strasbourg authorities suggest a test that involves consideration of whether the relationship between the applicant and the deceased is such that the applicant has ‘suffered gravely’ as a result of serious violations and is ‘personally concerned’ by them. Each case is to be determined on its particular facts. A family member as distant as a nephew can bring a claim; so too can a partner of the deceased, in particular if that person is also the parent of a child of the deceased. I have not been referred to any case where the applicant is a fiancée of the deceased, but in my view, such a person is capable of being a victim as falling into the category of persons who ‘suffered gravely’ as the result of serious violations of Article 2. If the First Claimant was ‘merely in a relationship with the Deceased’ whether that would suffice will have to be determined on the particular facts of the case. The nature and length of the relationship and whether the Second Claimant is the biological child of the Deceased will be important factors for consideration. As for the Second Claimant if she is not biologically the Deceased’s daughter but ‘has been brought up on the understanding that she is’ whether that is sufficient to make her a ‘victim’, again, will depend on the facts of the particular case. In the present case relevant factors for consideration are: (i) she was only one week old at the time of the Deceased’s death; (ii) the Deceased

was not named on her birth certificate as the father (para 4.16 of Agreed Case Summary); and (iii) she only visited the Deceased once, the day before he died (para 4.16). In my view on those facts it is unlikely the Second Claimant would be capable of being a 'victim', however this issue cannot be finally determined on the present state of the evidence." (*Morgan v Ministry of Justice* [2010] EWHC 2248 (QB).)

"By way of elaboration on those observations we would remark that while we are conscious of a seemingly increasing, indiscriminate and often inappropriate use of the term 'victim' in the media and elsewhere, the word 'victim' nonetheless still unquestionably conveys that the person to whom it is applied has, as a matter of fact, suffered both the injury, insult or disadvantage relevant to the particular context and that such was caused by the actings of the person or persons responsible for the event in question. There will of course be many situations in which it is entirely appropriate and proper to refer to a person as being a victim. But in the context of criminal proceedings it will generally be the case that until guilt is admitted or proved it will not be appropriate to refer to a complainant as being a 'victim'. The very purpose of the criminal process is, of course, first to establish whether the alleged crime has been committed and secondly whether the accused was the perpetrator. In general it is only once the first of these purposes has been achieved positively to the prosecutor that it may properly be said there is a victim of the crime charged. It is therefore important that in most aspects of the criminal process care is taken to avoid referring to a person making an allegation of criminal conduct towards him or her as a 'victim' other than in a context in which guilt is proved or is assumed for valid reasons. A particularly important part of the criminal process is, of course, the giving of instructions to the jury in cases prosecuted under solemn procedure, where correspondingly particular care should be taken. In that respect, users of the 'jury manual' should bear in mind the important note issued with the last amendment drawing attention to the observations in *Hogan v HM Advocate*." (*Michael Wishart v Her Majesty's Advocate* [2013] ScotHC HCJAC 168.)

Stat. Def., Justice Act (Northern Ireland) 2015 s.29.

VICTIM OF SLAVERY. Stat. Def., Modern Slavery Act 2015 s.56.

VICTIMISATION. Stat. Def., Equality Act 2010 s.27.

VICTUALLER. See **PUBLICAN**.

VICTUALLING-HOUSE. A victualling-house is a house where persons are provided with victuals, but without lodging (1 Burn's Jus. Peace (30th edn), 64).

See **ALEHOUSE**; **INN**; **PUBLIC HOUSE**.

VICTUALS. "Victuals" comprises everything that is food for man, and everything which, when mixed with something else, constitutes such food (*R. v Hodgkinson*, 10 B. & C. 74).

VIDELICET. See *Dakin's Case*, 2 Wms. Saund. (6th edn), 678; **NAMELY**; **THAT IS TO SAY**. See also *Ambatielos v Anton Jurgens* [1923] A.C. 191.

VIDEO CAMERA. Stat. Def., Wireless Telegraphy (Control of Interference from Videosenders) Order 1998 (SI 1998/722) art.3.

VIDEO GAME. Stat. Def., Corporation Tax Act 2009 s.1217AA inserted by Finance Act 2013 Sch.17 para.1.

VIDEO LINK. "44.The word 'attend' in Rule 23(1)(c) (also used in Rule 23(1)(b)) is not, in our judgment, restricted to attendance in person. In the modern age attendance at meetings is often effected in ways other than by attendance in person, for example by telephone or video link or Skype and other similar software products

which provide internet video calling. Much time, money and inconvenience are saved by making use of video and audio links. 45.Video links are now also a common feature of criminal and civil proceedings as well as coroner hearings. Rule 17 of the 2013 Rules provides for just this kind of attendance. A coroner may direct that a witness may give evidence at an inquest hearing through a live video link. We do not believe, at least for the purposes of coroner proceedings, that 'video link' should be restricted to a formal court link, court to court. It may also include other forms of link as long as they are by way of video so that the witness may be clearly seen and heard." (*Shafi v HM Senior Coroner for East London* [2015] EWHC 2106 (Admin).)

VIDEO RECORDER. Stat. Def., Wireless Telegraphy (Control of Interference from Videosenders) Order 1998 (SI 1998/722) art.3.

VIDEO RECORDING. Stat. Def., "means any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying sound-track" (Criminal Justice Act 2003 (c.44) s.140).

Stat. Def., "means a recording, in any form, from which a moving image may by any means be reproduced and includes data stored on a computer disc or by other electronic means which is capable of conversion into a moving image" (Animal Welfare Act 2006 s.8(7)).

VIDEO WORK. A game on computer disk, which if successfully completed, displayed a clip of moving naked women as a reward, amounted to "video work" within the meaning of the Video Recordings Act 1984 (c.39) s.1. The clip was not a video game and thus exempt under s.2(1)(c) (*Kent CC v Multi Media Marketing (Canterbury)*, *The Times*, May 9, 1995).

VIDIMUS. "An *innotescimus*, or *vidimus*, are all one, and are always a charter of feoffment, or some other instrument which is not of record" (*Page's Case*, 5 Rep. 53, b, 54 a).

VIEW. "'View' is the primary part of 'survey'; and survey is much, but not altogether, directed by view. It is true that view is of great use in the common law, and it is to be done and performed in person . . . In a word, there is a diversity between a view and a survey, for by the view one is to take notice only by the eye; but to survey is not only to take notice of a thing by the eye, but also by using other ceremonies and circumstances, as the hand to measure and the foot to pace the distances" (Callis, 105, 106). See also *Termes de la Ley*, *View*; Cowel; Jacob; R.S.C. Ord.35 r.8.

"View of frankpledge" was the office of the sheriff in his county court, or the bayliff in his hundred, to see that every man was in some pledge (Cowel; *Termes de la Ley*); see hereon 4 Bl. Com. 273.

In "view" of a constable (Metropolitan Police Act 1839 (c.47) s.63), *semble*, connoted that the constable actually saw and had view of the offence; the phrase was not equivalent to "found committing" in s.66 (*Simmons v Millingen*, 2 C.B. 524, cited *FOUND*).

"Upon such view", whereby justices might order diversion, etc. of a highway (Highway Act 1835 (c.50) s.85), meant that the justices making the certificate were themselves to have actual and joint inspection of the highway (*R. v Downshire*, 5 L.M.J.C. 72; *R. v Jones*, 10 L.J.M.C. 5; *R. v Cambridgeshire Justices*, 5 L.J.M.C. 6; *R. v Wallace*, 4 Q.B.D. 641). A compliance with these conditions would have been sufficiently stated, by the certificate reciting that "having upon view found" (*R. v Cambridgeshire*, above); *secus*, if it said "having particularly viewed", etc. "and being satisfied", etc. (*R. v Downshire*, above), or "having viewed", etc. "and it appearing

unto us", etc. (*R. v Jones*, above). As to the publication of the notices, and as to the certificate, and consent in writing of owners, see *R. v Kent Justices* [1905] 1 K.B. 378; see also AFFIX. From long user a presumption might have been drawn that the requirements of Highway Act 1835, ss.84–92, had been complied with (*Leigh Urban Council v King* [1901] 1 K.B. 747; but see *Cababé v Walton-on-Thames* [1914] A.C. 117). If it was found that an appellant would be "injured or aggrieved" (s.89), the appeal had to be allowed, though the proposed diversion would have been commodious to the public (*Walker v York* [1906] 1 K.B. 724; *Linton v Newcastle* 92 J.P. 187).

"With 'a' view" to giving a creditor a preference, means with 'the' view (see A). In deciding that that kind of "view" must be one for the benefit of a creditor, as distinguished from the bankrupt's own benefit, e.g. to avoid the consequences of his own breach of trust, Williams J. said: "It is very easy to confuse 'motive' and 'view'. In fact, it is so easy to confuse 'motive' and 'view' that there are numberless words in the English language which have a double or equivocal meaning, and are sometimes used to express motive and sometimes to express view. Let me illustrate by an example what I consider to be the difference between the meaning of these two words, and the meaning of 'view' in this section. I do not assent to the suggestion that 'view' means the primary result aimed at. If 'view' meant the primary result aimed at, every case would fall within Bankruptcy Act 1883 (c.42), s.48 (see Bankruptcy Act 1914 (c.59), s.44), in which it was proved that in fact a creditor was preferred and that the preference of that creditor was the necessary result of the act done by the bankrupt. It seems to me plain that this is not the meaning of the statute. The word 'view', as is used in this section, is used to express the object aimed at by the bankrupt in bringing about the primary result. Now, although the motive is not the thing that we are to look for but view, it is plain (as was pointed out by Lord Esher, *Ex p. Taylor* 18 Q.B.D. 295, cited A) that ascertaining the motive will very often assist you in determining what is the view. Suppose a case where the question was whether a man set fire to his house with the intention to injure his landlord or with the intention to defraud an insurance company. In such case, in my judgment, the setting fire to his house would be the primary object of that which he did, but that would leave open the question, whether he aimed at or effected that object with a view to injure his landlord or with a view to defraud the insurance company. Now, in order to ascertain that, you would be much assisted by ascertaining what his desire was, i.e. what the motive was that induced him to set fire to his house. You would have to take into consideration all the circumstances of the case. If you found that he was over-insured, that would be a strong piece of evidence to show that his view in setting fire to his house was to defraud the insurance company. If, on the other hand, you found that he was not over-insured but that he was angry with his landlord for having given him notice to quit, that would be a strong piece of evidence to show that his view was not to defraud the insurance company but to injure his landlord. And in the same way, in bankruptcy, you have the payment of the creditor, which is equivalent to the analogous case I have taken of setting fire to the house. With what view did the debtor make the payment to the creditor? Did he make it from a sense of duty, from a sense of favour or kindness towards the creditor? So here, the mere fact that there had been a breach of trust and that therefore it was possible that he should make the payment from a sense of duty is by no means conclusive. There might be other facts, such as his connection in blood with the *cestui que trust*, which might suggest that the dominant view was not to repair the wrong

VILL

done, but to favour one of his relatives" (*New's Trustee v Hunting* [1897] 1 Q.B. 616 at 617). That exposition seemed too subtle for Esher M.R., who (whilst agreeing with other members of the Court of Appeal in upholding the actual decision of Williams J.) said, "In my opinion, what the debtor did he did 'with the object', or 'with the view', or 'for the purpose' (I care not about the particular phrase), not of preferring the particular creditors, but for his own purposes" (*New's Trustee* [1897] 2 Q.B. 27, affirmed in House of Lords, nom. *Sharp v Jackson* [1899] A.C. 419); see *Re Lake* [1901] 1 K.B. 710; Bankruptcy Act 1914 (c.59) s.44; *Re Drage*, 134 L.T. 765; cp. *Re Dodds*, 60 L.J.Q.B. 599; *Re Blackburn* [1899] 2 Ch. 725. Cp. INTENT; PURPOSE.

When s.44(1) of the Bankruptcy Act 1914 (c.59) speaks of a disposition made with a "view" to giving a creditor a fraudulent preference it means with an intention of doing so. It is for the person seeking to set aside the disposition to establish that intention on the debtor's part, but it can be inferred from the circumstances (*Re Holmes (Eric) (Property)* [1965] Ch. 1052). See also *Re Cutts (a Bankrupt), Ex p. Bognor Mutual Building Soc v Cutts (Trustee of)* [1956] 1 W.L.R. 728).

So in *Ex p. Hill*, *Re Bird* 23, Ch. D. 704, Bowen L.J. said that, in nine cases out of ten, "with the view" and "with the motive" are synonymous; see also per the same learned judge, *Ex p. Griffith*, *Re Wilcoxon*, 23 Ch. D. 69. For an example of circumstances showing the view of a debtor when, being in insolvent circumstances, he pays a creditor, see ORDINARY COURSE.

"View or intent" of residence: see *Inland Revenue Commissioners v Cadwalader*, 42 Sc. L.R. 117, cited TEMPORARY.

"View, cognisance or management" (Sewers Act 1833 (c.22) s.47): see *Nesbitt v Marylebone Urban DC* [1918] 2 K.B. 1.

See PRESENCE; TREAT AND VIEW.

"With a view to". See WITH INTENT TO.

See WITH A VIEW TO.

VILL. "Vill" was synonymous with town (Co. Litt. 115B; 1 Bl. Com. 114), and, if of the same name as the parish, is coterminous with it until the contrary is proved (*Gibson v Clark*, 1 Jac. & W. 159; *Wray v Vesper*, Cro. Jac. 263); but there may be two or more vill in one parish, and, if one be of the same name as the parish, a conveyance of lands in a place of that name includes only those in the vill (*Stork v Fox*, Cro. Jac. 120). See also HAM; HAMLET; TOWNSHIP. See also *Cowes v Southampton Steam Packet Co* [1905] 2 K.B. 287.

As to distinction between "vill" and "parish", as a description of a locality, see Elph. 168, fn.

See VILLAGE.

VILLAGE. In Coke's time "village" and "town" seem, in law, to have been synonymous (Co. Litt. 115B; see also Index to Co Litt. tit. "Village"). So in the *Touchstone* (92), "This word (village or town) is of large extent. And by the grant of it, a manor, land, meadow and pasture, and divers such like things may pass". See VILL.

"Village" was discussed in *Waterpark v Fennell*, 7 H.L. Ca. 650; 5 Ir. Com. Law. Rep. 120; see also *Anon.*, 12 Mod. 546; *R. v Showler*, 3 Burr. 1391; *R. v Horton*, 1 T.R. 374.

"Town or village green": Stat. Def., Commons Registration Act 1965 (c.64) s.22(1). See TOWN.

VILLAGE GREEN. Stat. Def., Commons Act 2006 s.1(b).

“40. I acknowledge that there may be a legal distinction to be drawn between town or village greens, which were newly defined by section 22 CRA 1965, and rights of common which, though described in section 22, were not exhaustively defined.” (*Littlejohns, R. (on the application of) v Devon County Council* [2015] EWHC 730 (Admin).)

See also TOWN OR VILLAGE GREEN.

VILLAGISATION. “The reference to ‘villagisation’ was slightly unfortunate, perhaps. According to the Oxford English Dictionary it refers to a ‘concentration of population in villages’ and ‘the transfer of control of land to villagers communally.’ Some sources suggest that it often refers to a compulsory resettlement of people. The intention of the Council from these documents is perfectly plain, but it is perhaps to be hoped that this word will not slip into the lexicon of local authority officers. It is hardly consistent with the meaning of ‘Walthamstow’ taken from the Anglo Saxon word ‘Wilcumbestowe’ or ‘place of welcome’.” (*Williams v Waltham Forest LBC* [2015] EWHC 3907.)

VILLANI. “Villani in Domesday (often named) are not taken there for bondmen, but had their name de villis, because they had fermes, and there did worke of husbandry for the lord; and they were ever named before bordarii, etc. and such as are bondmen are called there servi” (Co. Litt. 5B; see also Co. Litt. 116A; Jacob, Servi, Villain). See BORDARII; VILLEIN.

To call a man a “villain” is not actionable, per se (per Pollock C.B., *Barnett v Allen*, 27 L.J. Ex. 412); *secus*, if you write that of him (*Bell v Stone*, 1 B. & P. 331). Cp. CHEAT.

VILLEIN. A villein was “a man of servile or base degree”, bound to obey his lord’s behest, “and whom his lord might put out of his lands and tenements, goods and chattels, at his will” (Cowel), and whom the lord might “robbe, beat, and chastise, at his will, save onely that he might not maime him” (Termes de la Ley, Villeinage). See also HEREDITAMENT; VASSAL; VILLANI; WAINAGE.

Villeinage was a servile tenure, whereby the tenant (though not, necessarily, a villein) “was bound to do all such services as the lord commanded, or were fit for a villein to do” (Cowel). See also Litt. Book 2, Ch.11; Co. Litt. 116A–114B; 2 Bl. Com. 92, 93; per Hargrave arg., *Somersett’s Case*, 20 State Trials, 35 et seq.

Villein Regardant: see GROSS; Cowel, Regardant.

See NEIFE.

VILLIERS’ ACTS. Public Works (Manufacturing Districts) Act 1836 (c.70).

Union Chargeability Act 1865 (c.79).

VINDICTIVE. “Vindictive damages” are those damages which are “not merely compensation for damage to land or goods (or the person?), but something more; and, so far as they are more, they are in character ‘vindictive’ in the legal sense” (per Collins L.J., *Rose v Buckett* [1901] 2 K.B. 456; see also *Pratt v B.M.A.* [1919] 1 K.B. 244).

VINDICTORY DAMAGES. “I am not convinced that, absent a special statutory basis for the award of vindictory damages such as arises in a number of Caribbean jurisdictions, such damages have yet been agreed as a discrete species of compensation in English law. I have considered the passage in the judgment of Lord Dyson in *Lumba & Another –v– Secretary of State for the Home Department* [2011] UKSC 12 at paragraphs 98–101. It seems to me there is no support there for a separate claim for vindictory damages. I do note the passage in paragraph 100 where Lord

Dyson implies support for the notion that conventional compensatory damages may have a valuable vindicatory effect, marking illegality on the part of government servants.” (*R. (on the application of NAB) v Secretary of State for the Home Department* [2011] EWHC 1191 (Admin).)

VINTNER. “Vintner” means one who sells wine, and a covenant prohibiting the trade of a “vintner” includes a person selling wine not to be drunk on the premises (*Wells v Attenborough*, 24 L.T. 312); and, by statute, the prohibition, in a lease, of the business “of a vintner”, would include the sale of wines to be consumed on the premises under the Refreshment Houses Act 1860 (c.27) s.44.

VIOL. See BELONGING.

VIOLATE. A bequest to found an institution will, generally, be valid if it be added “so as not to violate the Mountain Acts” (*Biscoe v Jackson*, 35 Ch. D. 460). See FOUND.

VIOLENCE. “Immediate unlawful violence” (Public Order Act 1986 (c.64) s.4(1)). Distribution of copies of a book containing abusive and insulting writing was not likely to cause any person to believe that “immediate unlawful violence” will be used against him (*R. v Horseferry Road Magistrates’ Court, Ex p. Siadatan* [1990] 3 W.L.R. 1006).

“Crime of violence”: see CRIME.

Stat. Def., Public Order Act 1986 (c.64) s.8.

“Violence on that person” (Offences against the Person Act 1864 (c.268) s.2(1)(f)(2), as amended). “Violence on that person” necessarily involved physical contact with the victim and did not include threatening or chasing him (*Daley v The Queen* [1998] 1 W.L.R. 494).

(Estate Agents Act 1979 (c.38) s.3(1)(a)(i).) For the purposes of s.3(1)(a)(i) an offence of violence could include the application of force to a building (*Antonelli v Secretary of State for Trade and Industry* [1998] 1 All E.R. 997).

“The Council’s contention in this connection is that . . . ‘violence’ in s. 198 [of the Housing Act 1996] involves, in a case such as this, some sort of physical contact. In my view, that contention is correct, and the judge was wrong. In s 198, ‘violence’ means physical violence and the word ‘violence’ on its own does not include threats of violence or acts or gestures, which lead someone to fear physical violence. I reach that conclusion for a number of reasons. First, this is the natural meaning of the word ‘violence’. I appreciate that an acontextual meaning of a word is not, of itself, an entirely safe basis for interpretation; a particular word must be construed in its context. However, when an ordinary English word is used, one is entitled to assume that, in the absence of good reason to the contrary, it should be given its primary natural meaning, and to my mind, when one is talking of violence to a person, it involves physical contact.” (*Danesh v Kensington and Chelsea Royal London Borough Council* [2006] EWCA Civ 1404 per Neuberger L.J. at [14] and [15].)

“The issue in this case is what is meant by the word ‘violence’ in section 177(1) of the Housing Act 1996. Is it limited to physical contact or does it include other forms of violent conduct? The Court of Appeal, as it was bound to do by the earlier case of *Danesh v Kensington and Chelsea Royal London Borough Council* [2006] EWCA Civ 1404, [2007] 1 WLR 69, held that it was limited to physical contact: [2009] EWCA Civ 1543. . . . In *Danesh* the first, and principal, reason given was that ‘physical violence’ is the natural meaning of the word ‘violence’: para 15. I can readily accept that this is a natural meaning of the word. It is, for example, the first of the meanings

given in the Shorter Oxford English Dictionary. But I do not accept that it is the only natural meaning of the word.” (*Yemshaw v London Borough of Hounslow* [2011] UKSC 3 (majority opinion).)

“Perhaps the leading authority on what is meant by a crime of violence is the decision of the Court of Appeal in *R v Criminal Injuries Compensation Board ex parte Webb* [1987] 1 QB 74. This was concerned with the not uncommon cases of persons committing suicide by throwing themselves in front of trains. Section 34 of the 1861 Act creates a specific offence of unlawfully endangering the safety of a person conveyed upon a railway. Claims by the drivers of the trains based on the psychiatric injuries they had suffered were rejected by the Board on the ground that a s.34 offence did not amount to a crime of violence. The Court of Appeal held that ‘crime of violence’ was not a term of art and that the Board had to apply to the words what was described as ‘a reasonable and literate man’s understanding’ of the circumstances in which compensation could properly be paid. As to this, Lawton LJ (at p. 79H) said that: ‘In my judgment, Mr. Wright’s submission that what matters is the nature of the crime, not its likely consequences, is well founded. It is for the board to decide whether unlawful conduct, because of its nature, not its consequence, amounts to a crime of violence. As Lord Widgery C.J. pointed out in *Clowes’s case*, at p. 1364, following what Lord Reid had said in *Cozens v Brutus* [1973] A.C. 854, the meaning of “crime of violence” is “very much a jury point.” Most crimes of violence will involve the infliction or threat of force but some may not. I do not think it prudent to attempt a definition of words of ordinary usage in English which the board, as a fact finding body, have to apply to the case before them. They will recognise a crime of violence when they hear about it, even though as a matter of semantics it may be difficult to produce a definition which is not too narrow or so wide as to produce absurd consequences, as in the case of the Road Traffic Act 1972 offence to which I have referred.’ . . . I therefore reject the view of the FTT set out in paragraph 37 of its decision (see paragraph 10 above) that Mr Hughes’ actions in throwing himself in front of the lorry could not amount to a crime of violence. The reference to the need to demonstrate a hostile act directed towards the victim, in my view, expresses the test too narrowly and is inconsistent with the statement in *Webb* that not all crimes of violence involve the infliction or threat of force. If a s.20 offence was committed by Mr Hughes then there was a crime of violence in this case.” (*Jones v First Tier Tribunal (Social Entitlement Chamber)* [2011] EWCA Civ 400.)

“11. I do not understand why the draftsman thought it necessary, in both section 177 and section 198, explicitly to include threats of violence as a sub-category within the definition of violence. This seems to me to add an unnecessary level of complication. If such threats have been made, and—as the definition requires—are ‘likely to be carried out’, that would seem necessarily to establish that it was probable that actual violence would occur if the applicant continues to occupy the property, or returns to the district (as the case may be); and specific provision is redundant. But I make this point only in the interests of clear thinking: it does not seem to impinge on the issues which we have to decide. . . .

27. In the end, however, I have concluded that such an approach cannot be reconciled with the way that section 177(1A) is drafted. The structure which the draftsman has adopted is that there is a single concept of ‘violence’, of which ‘domestic violence’ is a sub-category. This is, I think, the same point as Lady Hale makes, ‘on the other hand’, in para.35 of her judgment in *Yemshaw*; and it appears

VIOLENT

also to be the basis of the views of Lord Rodger and Lord Brown that ‘violence’ must have a single meaning. Further, quite apart from this verbal point, on reflection I think that to distinguish between the meaning of ‘violence’ as it appears in the phrases ‘domestic violence’ and ‘other violence’ is unsatisfactory as a matter of substance. As Lady Hale observes, people who are at risk of intimidating or harmful behaviour from their near neighbours merit protection no less than those who run the same risk from partners or family members; and Lord Rodger’s warning about ‘playing down the serious nature of psychological harm’ is not confined to the domestic context. . . . The burden which adopting a broader construction of ‘other violence’ may place on authorities is not of a nature, or inherently on a scale, that could justify the conclusion that Parliament cannot have intended it (still less so if, as I suspect, the additional impact caused by such a construction is likely to be less than that already caused by *Yemshaw*). . . .

31. In short, therefore, I believe that the phrase ‘other violence’ in section 177(1) covers not only physical violence (actual or threatened) but other threatening or intimidating behaviour or abuse, if of such seriousness that it may give rise to psychological harm. . . .

32. I should perhaps say a little more about ‘psychological harm’. That term does not appear in the statute itself and it should not be treated as a formal requirement of section 177(1) that an applicant has suffered, or is likely to suffer, such harm as a result of the conduct in question. Rather, its significance is, as discussed above, that conduct cannot normally be described as ‘violent’, as opposed to merely anti-social, unless it is of such a nature and seriousness as to be liable to cause psychological harm. That being so, it is not necessary for officers making decisions under the homelessness provisions to search for some technical, still less medical, meaning. I think the broad sense in which the phrase is employed in *Yemshaw* is adequately well understood in ordinary usage. It connotes something more than transient upset or distress. Psychological harm will often shade into, or overlap with, a diagnosed psychiatric injury or illness, such as depression; but that need not always be so.” (*Hussain v London Borough of Waltham Forest* [2015] EWCA Civ 14.)

See CRIME OF VIOLENCE.

VIOLENT. Where the phrase “entry to . . . premises by forcible and violent means” was used in an insurance policy “violent” was used in its ordinary sense, and accordingly entry to the insured’s premises by using stolen keys was not violent (*Nash t/a Dino Services v Prudential Assurance Co* [1989] 1 All E.R. 422). See also **FORCIBLE**.

“Violent offence” (Criminal Justice Act 1991 (c.53) s.31(1)). Attempted rape where the victim suffered actual physical injury came within the definition of “violent offence” in s.31(1) (*R. v Robinson*, *The Times*, December 3, 1992).

Use of an imitation firearm during the commission of a robbery was not a “violent offence” within the meaning of s.31(1) (*R. v Palin (Gareth Wayne)* (1995) Cr.App.R.(S.) 888).

Possession of a knife without intention to use it was not a “violent offence” within the meaning of the Criminal Justice Act 1991 (c.53) s.31(2) (*R. v Bibby* [1994] Crim. L.R. 610).

The carrying of a firearm which was unloaded and intended merely to frighten rather than to harm did not amount to a be a “violent offence” (*R. v Khan (Touriq)* (1995) Cr.App.R.(S.) 180).

See EXTERNAL.

VIOLENT OFFENCE. False imprisonment and burglary can satisfy the definition of “violent offence” in s.161(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (*R. v Szczerba*, T.L.R., April 10, 2002, CA).

Stat. Def., s.161(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6) (“an offence which leads, or is intended or likely to lead, to a person’s death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition)”).

VIRGATA TERRÆ. See YARDLAND.

VIRTUAL. Stat. Def., Gambling Act 2005 (c.19) s.353(3).

VIRTUALLY. “Virtually unable to walk”: see UNABLE.

VIRTUE. See BY VIRTUE; *Canada Steamship Lines v R.* [1952] A.C. 192.

VIS MAJOR. See ACT OF GOD; IRRESISTIBLE.

VISIBLE. “Visible means” as used in County Courts Act 1867 (c.142) s.10 (see County Courts Act 1959 (c.22) s.46(1)) is not (as was laid down by Whiteside C.J., *Counsel v Garvie*, Ir. Rep. 5 C.L. 74, 77) to be narrowed so as to be synonymous with “tangible means”; but, at the same time, effect is to be given to the word “visible”, and therefore “the words refer to means of paying which are visible to the bodily or mental eye of an attentive observer — means of payment which the person who makes the affidavit can fairly ascertain” (per Fry L.J., *Lea v Parker*, 13 Q.B.D.). The right conferred by s.46 of the Act of 1934 is not taken away by Legal Aid and Advice Act 1949 (c.51) (*Burton v Holdsworth* [1951] 2 K.B. 703).

“Visible means of support” (Mental Deficiency Act 1913 (c.28) s.2(1)): see *R. v Radcliffe* [1915] 3 K.B. 418; *Re Wilkinson*, 83 J.P. 422.

“Visible means” causing injury: see EXTERNAL.

“Visible waters”: see DEFINED CHANNEL.

VISIT. See ASSOCIATE.

VISITOR. “Visitor” (Occupier’s Liability Act 1957 (c.31) s.2(1)). A person who exercises his public or private right of way over a bridge owned by the British Railways Board is not a “visitor” of the Board within the meaning of this section (*Greenhalgh v British Railways Board* [1969] 2 Q.B. 286). Similarly a milkman exercising his right of way over land was not a “visitor” of the landowner when his purpose was the delivery of milk to another person (*Holden v White* [1982] 2 W.L.R. 1030).

See also *Baxendale v North Lambeth Liberal Club* [1902] 2 Ch. 429, cited *WAY*; *Keith v Twentieth Century Club*, 73 L.J. Ch. 549, cited *FRIEND*; *Thornton v Little*, 23 T.L.R. 357; *Hammond v Prentice* [1920] 1 Ch. 201.

For the purposes of the Occupiers’ Liability (Northern Ireland) Act 1957 (c.25) s.2, a person who used a public right of way was not a visitor to the land over which the right of way passes (*McGeown v Northern Ireland Housing Executive* [1994] 3 W.L.R. 187).

VISUALLY IMPAIRED PERSON. Stat. Def., “means a person—(a) who is blind; (b) who has an impairment of visual function which cannot be improved, by the use of corrective lenses, to a level that would normally be acceptable for reading without a special level or kind of light; (c) who is unable, through physical disability, to hold or manipulate a book; or (d) who is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading” (s.6 of the Copyright (Visually Impaired Persons) Act 2002 (c.33)).

VITREOUS

VITREOUS. “Vitreous: 65per cent” in a contract for the sale of hard wheat refers to the percentage content of the whole consignment including any of the hard part of the grain which is mitadined (*Compagnie Algérienne de Meunerie v Kyprianou* [1961] 2 Lloyd’s Rep. 113).

VIVARY. Vivary, vivarium, is a word of large extent, signifying a place in land or water where living things are kept, e.g. parks, warrens, piscaries or fishings (2 Inst. 100), or a stew (2 Inst. 162). By the grant of a “vavarye”, “not only the privilege, but the land itself passes” (Co. Litt. 5B).

VIVER. “Viver or vivier—a fishpond (2 Inst. 199)”.

VIZ. See NAMELY; VIDELICIT.

VOCALIST. An entertainer whose performance contains no musical element is not a “vocalist” within the meaning of the word as used in an innkeeper’s licence which restricted performances other than by vocalists (*Whitehead v Haines* [1965] 1 Q.B. 200).

VOCATION. Turf “bookmaking” is a “vocation” within the Income Tax Act 1842 (c.35)—see Income and Corporation Taxes Act 1970 (c.10) s.109—and as such its profits are assessable (*Partridge v Mallandain*, 18 Q.B.D. 276). In that case Denman J. said that even an illegal vocation would be taxable on its income; as, “if a man were to make a systematic business of receiving stolen goods, and to do nothing else, and were thereby to make a profit of (say) £2,000 a year, the Income Tax Commissioners would be quite right in assessing him, if it were, in fact, his vocation”.

Where an appellant’s sole means of livelihood was derived from backing horses from his residence at starting price, it was held that the aggregate of winnings was not derived from a “vocation” within the meaning of Income Tax Acts (above): see *Graham v Green* [1925] 2 K.B. 37.

“Vocation” (Sex Disqualification (Removal) Act 1919 (c.71) s.1) could include the training of racehorses (*Nagle v Fielden* [1966] 2 Q.B. 633).

“Vocational school” (EEC Council Regulation No.1612/68 art.7(3)): Education (Mandatory Awards) Regulations 1983 (SI 1983/1135) does not refer only to establishments offering manual and technical courses. The test is whether the training is intended to prepare or qualify a person for a particular vocation or job. Thus a college of higher education or a faculty of education at a university would be “vocational” schools, whereas a law faculty offering an LL.B. course, being academic in nature, would not (*R. v ILEA, Ex p. Hinde, Duverley and Phillips* (1985) 83 L.G.R. 695).

See BOOKMAKER; CALLING; PUBLIC OFFICE.

VOCATIONAL TRAINING. Those years of an educational course which, taken in isolation, could not be regarded as “vocational training” within the meaning of the EEC Treaty were, none the less, to be so regarded if the whole course, of which they formed a part, constituted a preparation for a qualification for a particular profession, trade or employment, or which provided the necessary skills for such profession, trade or employment (*Gravier v City of Liège* [1985] E.C.R. 593; *Belgian State v Humbel*, 263/86 [1988] E.C.R. 5365). University education in veterinary medicine is “vocational training” (*Blaizot v University of Liège* (No.24/86) [1989] 1 C.M.L.R. 57).

Stat. Def., Equality Act 2010 s.56.

VODKA. “Vodka and whisky fall into this category. Although they do not denote and are not derived from any particular geographical location, they have, as a matter of language, come to be used to describe particular types of spirit distilled in a particular

way. To that extent they are no different in descriptive terms from the other examples of well-known commodities relied on by Mr Wyand such as beer or butter. Products of this kind cannot acquire a secondary meaning in their own descriptive name. If they are to qualify for protection under the extended form of passing-off it can only be because they have acquired a reputation and goodwill in their own name by dint of the qualities or characteristics which they possess. This point was made in the Court of Appeal by Chadwick LJ in *Chocosuisse Union des Fabricants Suisses de Chocolat v Cadbury Ltd* [1999] RPC 826 ('Chocosuisse'), a decision to which I will return later in this judgment." (*Diageo North America Inc v Intercontinental Brands (ICB) Ltd* [2010] EWCA Civ 920.)

VOICE. "Multiply voices": see *Phillpotts v Phillpotts*, 10 C.B. 85, cited VOID; SPLIT.

VOID. In Fraudulent Conveyances Act 1585 (c.4) s.2, vacating, in favour of purchasers, fraudulent conveyances, the phrase was that they shall be "utterly void, frustrate, and of none effect"; see thereon *Gooch's Case*, 5 Rep. 60 b.

The decisions on the Artificers and Apprentices Act 1562 (c.4), whilst they show how little the courts refused to consider the word "void" as intensified by superadded phrases, show also that on the same words, in the same statute, an informal indenture of apprenticeship would be held void for some purposes, and only voidable for others. The language of the statute (s.41) is that all indentures of apprenticeship, not in conformity thereto, shall be "clearly void in law, to all intents and purposes whatsoever". Yet to enable an infant apprentice to gain a parochial settlement, it was held that an apprenticeship indenture not in conformity, was merely voidable between the parties (*R. v St. Nicholas*, 1 Bott, 530, on which see *R. v Gravesend*, above; *R. v St. Gregory*, 4 L.J.M.C. 9; *Gray v Cookson*, 16 East, 13); but when a master, citing *R. v St. Nicholas* and other such like cases, sought to recover damages for harbouring an apprentice who had been bound by an indenture not in conformity with the statute, it was held he could not recover (*Gye v Felton*, 4 Taunt. 876).

So, in an almost undeviating course, run the older authorities, which seem to justify the statement that the phrase "to all intents and purposes", in connection with the word "void", is little more than an expletive. But in *Phillpotts v Phillpotts* (10 C.B. 85), Maule J. comments on the absence of the phrase in the provision then under consideration (see also per Chelmsford C., in *Parker v Taswell*, below); and in *Re Toomer, Ex p. Blaiberg* (23 Ch. D. 254) Jessel M.R. in some measure leant on its absence in Bills of Sale Act 1878 (c.31) s.8, for the purpose of holding that a bill of sale which would have been void against an execution creditor, was not so, under the circumstances, as against a trustee in bankruptcy; whilst in *Davies v Rees* (17 Q.B.D. 408), Esher M.R. seems to have read the phrase into Bills of Sale Act 1882 (c.43) s.9, for the purpose of giving the word "void" its most absolute effect. Bills of Sale Act 1878 s.8 only made an unregistered bill of sale void as against the persons therein mentioned (*Davies v Goodman*, 5 C.P.D. 128; *Cookson v Swire*, 54 L.J.Q.B. 249, applied in *Antoniadi v Smith* [1901] 2 K.B. 589; see also *Hopkins v Gudgeon* [1906] 1 K.B. 690); under s.8 of the Act of 1882, it is void even as between grantor and grantee (*Davies v Rees*, above; per Lindley L.J., *Re Townsend*, 16 Q.B.D. 532), but only, as provided by the concluding words of the section, "in respect of the personal chattels comprised therein" (*Heseltine v Simmons* [1892] 2 Q.B. 547). If "void" for not being in accordance with the form prescribed (s.9), a bill of sale is void even as regards its covenants (*Davies v Rees*, *Re Townsend*, and *Heseltine v Simmons*, above), and also as

VOID

to personal chattels duly described and granted (*Thomas v Kelly*, 13 App. Cas. 506); but even this stringency does not make a bill of sale void as to property not subject to the Bills of Sale Acts (*Re Burdett*, 20 Q.B.D. 310; *Re Isaacson* [1895] 1 Q.B. 333; *North Wales Produce & Supply Society* [1922] 2 Ch. 340, cited COMPANY; *Scott v Shaw & Lee* [1928] 2 K.B. 26; *Shears v Jones* [1922] 2 Ch. 802).

In discussing the meaning of this word in a contract, Lord Reading C.J. said that in every contract the word “void”, according to its natural and ordinary meaning, means void to all intents and purposes, but unless there are clear words to the contrary, a clause making a contract void must be read subject to the condition that the party seeking to set up the invalidity is not himself in default: see *New Zealand Shipping Co v Société des Ateliers* [1917] 2 K.B. 717, affirmed [1919] A.C. 1. See also *Re Meyrick's Settlement* [1921] 1 Ch. 311; *Fawcett v Star Car Sales Ltd* [1960] N.Z.L.R. 406.

The principle of *Davies v Rees*, 17 Q.B.D. 408, is applicable to “void” as used in Deeds of Arrangement Act 1887 (c.57) s.5—see Deeds of Arrangement Act 1914 (c.47) s.2 (*Hedges v Preston*, 80 L.T. 847).

A lease for more than three years which (by the joint operation of the Statute of Frauds 1677 (c.3), and Real Property Act 1845 (c.106) s.3; see Law of Property Act 1925 (c.20) s.54) is “void at law unless made by deed”, is valid as an agreement for a lease (*Parker v Taswell*, 27 L.J. Ch. 812); and, without any deed being made, the document will constitute the agreement between the parties as regards the occupancy, so that, on its termination, the tenant goes out without notice (*Tress v Savage*, 23 L.J.Q.B. 339), and each party is responsible on his own agreements contained in the document, and his liability thereunder may be enforced against him even after to so-called “term” of the document has expired (*Martin v Smith*, L.R. 9 Ex. 50, and other cases, cited TERM). As to the effect of Judicature Act 1873 (c.66) s.25 (see Judicature Act 1925 (c.49) s.44), on Real Property Act 1845 (c.106) s.3, see *Walsh v Lonsdale*, 21 Ch. D. 9, on which see *Coatsworth v Johnson*, 55 L.J.Q.B. 220; *Manchester Brewery Co v Coombs*, 82 L.T. 347, cited ASSIGNS.

A thing “void” as against a specified person or class may be good as against everybody else (*Young v Billiter*, 8 H.L. Cas. 682; 30 L.J.Q.B. 153). Cp. ILLEGAL.

“Something which is void cannot be validated retrospectively.” (*Re Taylor (a bankrupt)* [2006] EWHC 3029 (Ch) per Judge Kershaw QC at [70].)

“But the expression ‘void’ was apt and in no way doubtful in its meaning, and the change of language does not alter the legal result: whether described as ‘void’ or ‘unlawful’ the decision to dismiss and the dismissal were without legal effect. There is no analogy with wrongful dismissal, where a dismissal may be unlawful but none the less effective.” (*McLaughlin v Governor of the Cayman Islands* [2007] UKPC 50 per Lord Bingham of Cornhill at [17].)

See NULL AND VOID.

For a void order of a court, see *Isaacs v Robertson* [1985] A.C. 97.

SETTLEMENT; VALUABLE; VOLUNTARY PAYMENT; VALUNTARY SETTLEMENT; UNCERTAINTY.

“Make void”: see AFFECT.

VOID SPACE OF GROUND. As to whether a railway is a “void space of ground” within a Rating Act, see *Arnell v London & North Western Railway*, 12 C.B. 697.

VOIDABLE. “Voidable” was the concluding word of Infants Relief Act 1874 (c.62) s.1, and in a case in which it somewhat came in question, *Kekewich J.*, said that

“voidable” means that a thing is valid until repudiated, not that it is invalid until confirmed (*Duncan v Dixon*, 44 Ch. D. 211).

When an allotment of shares in a company is “voidable at the instance of the applicant” (Companies Act 1900 (c.48) s.5(1)); see Companies Act 1985 (c.6), s.85(1)), the allotment is avoided if the applicant gives notice of repudiation within the prescribed time, and where necessary, afterwards and with reasonable promptitude takes proceedings for setting aside the allotment: see *Re National Motor Mail Coach Co (No.2)* [1908] 2 Ch. 228; see also *Re Jubilee Cotton Mills* [1924] A.C. 598.

“Voidable as a civil contract” (Deceased Wife’s Sister’s Marriage Act 1907 (c.47) s.1): see *R. v Dibdin* [1912] A.C. 533, cited *EVIL LIVER*.

“Voidable title” (Sale of Goods Act 1893 (c.71) s.23): see *Whitehorn v Davison* [1911] 1 K.B. 463; *Heap v Motorists’, etc. Agency* [1923] 1 K.B. 577; *Folkes v King* [1923] 1 K.B. 282; *Robin and Rambler Coaches Ltd v Turner* [1947] 2 All E.R. 284; *Dennant v Skinner and Collom* [1948] 2 K.B. 164.

See VOID.

VOIDANCE. See AVOIDANCE; LAPSE.

VOLENTI NON FIT INJURIA. See *Baker v James Bros & Sons Ltd* [1921] 2 K.B. 674; *Letang v Ottawa Electric Railway Co* [1926] A.C. 725.

The maxim was held not to apply where a policeman on duty stopped a runaway horse in a crowded spot. Probably it does not apply in any case of voluntary assumption of such a risk (*Haynes v Harwood* [1935] 1 K.B. 146).

Ice hockey rink proprietors were not liable for injury to a spectator hit by a puck (*Murray v Harringay Arena* [1951] 2 K.B. 529). But see *Payne v Maple Leaf Gardens* [1949] 1 D.L.R. 369.

The doctrine is not available, except in exceptional circumstances, as a defence to an action for negligence brought against a drunken driver by one who had voluntarily ridden with him in the car (*Dann v Hamilton* [1939] 1 K.B. 509). See also *Joyce v Kettle* [1948] Q.S.R. 139; but see *Roggenkamp v Bennett*, 80 C.L.R. 292.

It did not apply where a motor cycle pillion passenger was injured and the motor cycle was to his knowledge travelling without lights (*Marshall v Batchelor*, 51 W.A.L.R. 68). Nor where a pupil in a dual control aeroplane crashed whilst making a simulated forced landing (*McWilliam v Thunder Bay Flying Club* [1951] 1 D.L.R. 128).

It does not apply in cases of breach of statutory duty (*Wheeler v New Merton Board Mills Ltd* [1933] 2 K.B. 669).

It was held not to apply where a carter who drove a horse after protesting that it was unsafe was injured when the horse bolted (*Bowater v Rowley Regis Corp* [1944] K.B. 476).

VOLUME. “Volume”, in definition of book (Copyright Act 1842 (c.45); see now Copyright Act 1911 (c.46) s.15(7)): see *Cambridge University v Bryer*, 16 East, 317; *British Museum v Payne*, 2 Y. & J. 166.

A right to publish a book “in volume form” was infringed when the book was published complete in one issue of a weekly periodical (*Jonathan Cape v Consolidated Press* [1954] 1 W.L.R. 1313).

VOLUNTARILY. If a person, without duress of person or goods, does a thing, e.g. appears before a foreign tribunal, he does that thing “voluntarily” (*Vionet v Barrett*, 55 L.J.Q.B. 39), even though he protest against being called on to do it (*Bossiere v Brockner*, 6 T.L.R. 85). In that case, Cave J. said he was unable to supply the reasons

VOLUNTARY

for the decisions in *Davies v Price* (34 L.J.Q.B. 8) and *Ringwood v Lowndes* (33 L.J.C.P. 337), and declined to extend the application of those decisions.

“Voluntarily” (Customs and Inland Revenue Act 1881 (c.12) s.38(2)(b)) “is not used in the sense of ‘without consideration’, but in its ordinary sense of ‘freely’, ‘without compulsion’, and ‘not under any obligation’” (*Att-Gen v Ellis* [1895] 2 Q.B. 466).

VOLUNTARY. See CONSENT.

“Any voluntary payment” (Housing Benefit (General) Regulations 1987 (SI 1987/1971) Sch.4 para.13(1)). Payments made to a miner’s widow in lieu of concessionary coal was not “voluntary payments” within the meaning of, and for the purposes of this paragraph (*R. v Doncaster Metropolitan BC, Ex p. Boulton* (1992) 25 H.L.R. 195).

Cash payments in lieu of concessionary coal which had been made in the expectation of improved industrial relations and efficiency were not “voluntary payments” (*Social Security Decision*, No.R (IS) 4/94 (1995) 9 C.L. 446).

The fact that a person who manages a body is paid to do so need not prevent the body from being essentially voluntary for VAT purposes (*Bournemouth Symphony Orchestra v Commissioners of Customs and Excise* [2005] EWHC 1566, Ch).

Stat. Def., National Health Service Act 1946 (c.81) s.79(1).

“Voluntarily accepted the risk”: for the meaning of this expression in s.5(2) of the Animals Act 1971—and in particular for the proposition that these words are to be read in their ordinary English meaning without too much reference to the long history of the doctrine of volenti—see *Cummings v Granger* [1977] Q.B. 397 at 408 per Ormrod L.J., applied in *Flack v Hudson* [2001] 2 W.L.R. 982, CA.

“The concept of ‘voluntariness’ is extremely elusive. Its core meaning would seem to be that a physical movement (or a failure to move out of a particular situation when circumstances required such movement) cannot be said to have been voluntary if the subject did not (or even, probably, could not) direct his will to the movement or lack of movement in question. The concept was put thus, in general terms, by Lord Simon of Glaisdale in *DPP for Northern Ireland v Lynch* [1975] A.C. 653 at 689F: “Volition” I take to be synonymous with “will” (i.e., the power of directing action by conscious choice); so that an “act” is a voluntary physical movement, and an involuntary physical movement is not an “act”” (*Al-Ameri v Kensington and Chelsea Royal LBC* [2003] 1 W.L.R. 1289 at 1307 CA per Buxton L.J.).

See MANAGED ON AN ESSENTIALLY VOLUNTARY BASIS.

See DETAINED.

VOLUNTARY ASSOCIATION. See hereon *Smith v Kerr* [1900] 2 Ch. 511, cited CHARITY, and authorities therein cited; *Brown v Dale*, 9 Ch. D. 78.

Stat. Def., Employment and Training Act 1948 (c.46) s.18(1).

VOLUNTARY CONTRIBUTIONS. “Voluntary contributions” and “voluntary subscriptions” are synonyms (Tudor Char. Trusts).

“Voluntary contributions” may mean: (1) that the contributions are not compulsory; or (2) that they are without consideration (per Halsbury C., *Savoy v Art Union* [1896] A.C. 305).

“Voluntary contributions” (Scientific Societies Act 1843 (c.36) s.1; see General Rate Act 1967 (c.9) s.40) had to be a “gift made from disinterested motives for the benefit of others” (per Campbell C.J., *Russell Institution v St. Giles and St. George, Bloomsbury*, 23 L.J.M.C. 65), and a society, to be exempt from rates under that section, had to receive such contributions as gratuitous offerings, without returning to

the contributors any direct advantage; therefore, the Art Union of London was not such a society (*Savoy v Art Union* [1896] A.C. 296). Grants from public funds were not "voluntary contributions" (*British Launderers' Research Association v Hendon Rating Authority* [1949] 1 K.B. 462; *Battersea BC v British Iron and Steel Research Association* [1949] 1 K.B. 434). A society in which members have substantial benefits for their subscriptions is not supported by voluntary contributions within the Act (*Institution of Mechanical Engineers v Cane* [1961] A.C. 696). "Voluntary contributions" under this section meant contributions which were gratuitous whether or not the contributors were under an obligation to make them. They did not include government grants or income from endowments, but did include gratuitous subscriptions, gifts, legacies and payments made by trustees of outside trusts (*Cane v Royal College of Music* [1961] 2 Q.B. 89). See SCIENCE.

Institution, etc. "wholly maintained by voluntary contributions" (Charitable Trusts Act (1853) (c.137) s.62; see Charities Act 1960 (c.58)) was one which had no invested endowment yielding an income for its support, but was dependent upon the gifts of the benevolent, whether recurrent or occasional and whether inter vivos or by will (*Re Clergy Orphan Corp* [1894] 3 Ch. 150). A hospital which was supported by a single voluntary gift out of which it was founded is not "wholly maintained by voluntary contributions" within the meaning of the section (*Re Richard Murray Hospital* [1914] 2 Ch. 713).

"Voluntary contributions" under this section was not confined to annual subscriptions (per Romilly M.R., *Corporation for Relief of Widows and Children of the Clergy v Sutton*, 29 L.J. Ch. 393); the phrase was used in a popular sense, and denoted recurring gifts, repeated annually or otherwise with more or less regularity. Donations or bequests (which would be included, as well as subscriptions, in the general term "contributions") were dealt with in the following sentence (*Re Clergy Orphan Corp* [1894] 3 Ch. 151). See further *Re Wilson*, 19 Bea. 594; Tudor Char. Trusts (5th edn), 542, 544. See *Re Society for Training Teachers of the Deaf* [1907] 2 Ch. 486; *Att-Gen v Mathieson* [1907] 2 Ch. 383. See also *Orphan Working School and Alexandra Orphanage's Contract* [1912] 2 Ch. 167; *Re Harding and Welsh Calvinistic Methodist Trustees*, 92 L.T. 641.

Exemption from tax, on "property acquired by or with funds voluntarily contributed" (Customs and Inland Revenue Act 1885 (c.51) s.11(6)) did not extend, e.g., to the New University Club (*Re New University Club*, 18 Ch. D. 720, following *Society of Writers to the Signet v Inland Revenue Commissioners*, 14 Sess. Cas. (4th Series) 34).

Gift over of a fund (the income of which was to be towards the support of a school) on the school ceasing to be supported by "voluntary subscriptions": see *Re Beard* [1904] 1 Ch. 270, where it was held that the school managers' personal obligation to their bank to repay loans for carrying on the school, amounted to such voluntary subscriptions. See also as to such a gift over, *Re Blunt* [1904] 2 Ch. 767, discussed and distinguished in *Re Peel* [1921] 2 Ch. 218.

VOLUNTARY DISPOSITION. "Voluntary disposition" (Customs and Inland Revenue Act 1881 (c.12) s.38(2)(a)): see *Att-Gen v Jacobs-Smith* [1895] 2 Q.B. 341.

"A voluntary disposition is chargeable with the like stamp duty as if it were a conveyance on sale" (Finance (1909–10) Act 1910 (c.8) s.74(1)); such duty had to be assessed by the Inland Revenue Commissioners (subs.(2)), and its adequacy could not be inquired into by a subsequent purchaser: see *Re Weir and Pitt*, 55 S.J. 536.

VOLUNTARY

“Any conveyance . . . operating as a voluntary disposition *inter vivos*”, in Finance (1909–10) Act 1910 s.74(1), applied to settlements of real estate: see *Baker v Inland Revenue Commissioners* [1924] A.C. 270; see also *Stanyforth v Inland Revenue Commissioners* [1930] A.C. 339; *Associated British Engineering Co v Inland Revenue Commissioners* [1941] K.B. 15 (distribution *in specie* to company’s shareholders liable to ad valorem stamp duty); *Fuller v Inland Revenue Commissioners* [1950] 2 All E.R. 976.

See CONVEYANCE; DISPOSITION; VOLUNTARILY; VOLUNTARY SETTLEMENT; VOLUNTEER.

VOLUNTARY LEAVER (OF UNITED KINGDOM). Stat. Def., s.58 of the Nationality, Immigration and Asylum Act 2002 (c.41).

VOLUNTARY LIQUIDATION. See LIQUIDATION.

VOLUNTARY ORGANISATION. Stat. Def., (applying Stat. Def. in National Assistance Act 1948 (c.29)) Carers (Recognition and Services) Act 1995 (c.12) s.1(6); Housing Act 1996 (c.52) ss.2(6) and 180(3); National Minimum Wage Act 1998 (c.39) s.44(4).

Stat. Def., “means a body other than a public or local authority the activities of which are not carried on for profit” (s.2 of the Adoption and Children Act 2002 (c.38)).

VOLUNTARY PAYMENT. “A voluntary payment is a payment simply by the act and will of the party making it; if there is anything to interfere with or control this will, then it is not a voluntary payment. It is said that a payment is voluntary when made as a matter of favour; but it may, nevertheless, not be a voluntary payment. Suppose a person who has done another many favours comes to him and asks in return a favour for a third party and the person asked says, ‘It is against my will, yet, as you ask the favour, I will grant it’; would that be a voluntary act? It would in one sense, because he has the power to refuse it; but still there is an influence, for he grants the favour upon the solicitation of a person who has a right to ask it” (per Alderson B., *Strachan v Barton*, 11 Ex. 650). That definition was upon what would be a VOID voluntary payment in bankruptcy, on which see *Ex p. Hill, Re Bird*, 23 Ch. D. 695; VIEW. Cp. VOLUNTARILY.

VOLUNTARY SCHOOL. The Royal Victoria Patriotic Asylum at Wandsworth was not “land or buildings used exclusively or mainly for the purposes of the schoolrooms, offices, or playground of a voluntary school” within Voluntary Schools Act 1897 (c.5) s.3 (*Patriotic Fund Commissioners v Wandsworth*, 88 L.T. 865). See hereon per Smith M.R., *R. v Cockerton* [1901] 1 K.B. 734, 735.

Stat. Def., Voluntary Schools Act 1897 (c.5) s.4; Education Act 1944 (c.31) s.9.

VOLUNTARY SETTLEMENT. “Past or future voluntary settlement” (Customs and Inland Revenue Act 1881 (c.12) s.38(2)(c), explained by Customs and Inland Revenue Act 1889 (c.7) s.11): see *Att-Gen v Chapman* [1891] 2 Q.B. 526; *Att-Gen v Gosling* [1892] 1 Q.B. 545; *Att-Gen v Wendt*, 65 L.J.Q.B. 54.

See SETTLEMENT; VOID; VOLUNTARILY; VOLUNTARY DISPOSITION.

VOLUNTARY TRANSFER. As to what was a “voluntary transfer or delivery” of property within Insolvent Debtors (England) Act 1826 (c.57) s.32, see *Wainwright v Clement*, 8 L.J. Ex. 25. See FRAUDULENT ASSURANCE.

“Voluntary” transfer: see *Att-Gen v Ellis* [1895] 2 Q.B. 466, cited VOLUNTARILY.

VOLUNTARY WASTE. See WASTE.

VOLUNTARY WINDING-UP. See WINDING-UP.

VOLUNTEER. Every one who, under any disposition, takes a benefit for which neither himself nor any one on his behalf gives any consideration, is a volunteer, e.g. the consideration of marriage, in a marriage settlement, extends only to the husband and wife and the issue of their marriage (*Att-Gen v Jacobs-Smith* [1895] 2 Q.B. 341, cited VOLUNTARY DISPOSITION; explaining *Newstead v Searles*, 1 Atk. 265; see also *De Mestre v West* [1891] A.C. 264).

So, every one in whose favour an appointment is made under a general power, and to whom or in whose favour the appointor is under no obligation to appoint, is a "volunteer". "The interest given by a settlement to, e.g. the children in default of appointment, is one thing; the interest which they take by virtue of the appointment is another and a very different interest; and though it is true that they are not volunteers with respect to the former, yet that interest is destroyed by the execution of the power and the interest which they take under the appointment they owe to the voluntary act and bounty of the appointor; and in respect of this latter interest they are mere volunteers, just as much as any strangers would be in whose favour the donee of the power might have thought fit to exercise it" (per Kindersley V.C., *Vaughan v Vanderstegen*, 2 W.R. 295). See hereon *Re Roper*, 39 Ch. D. 482; *Re De Burgh Lawson*, 41 Ch. D. 568; *Re Parkin* [1892] 3 Ch. 521.

"Volunteer" (Customs and Inland Revenue Act 1889 (c.7) s.11): see *Att-Gen v Jacobs-Smith* [1895] 2 Q.B. 341; VOLUNTARY SETTLEMENT.

See DONATIO MORTIS CAUSA; GOOD; PURCHASE; VIEW; VOID.

VOTE. "There are two well-known methods of voting, (1) by show of hands, and (2) by a poll; and the essence of the former method is that the hands are held up and counted by decision of the eye" (per Chitty J., *Ernest v Loma Co* [1896] 2 Ch. 572). Therefore, though the voting at a company's meeting is to be "either personally or by proxy", e.g. Companies Act 1862 (c.89) Table A art.48 (see Companies Act 1985 (c.6) s.8 and Companies (Alteration of Table A, etc.) Regulations 1984 (SI 1984/1717)), yet proxies ought not to be counted on the show of hands (*ibid.* [1897] 1 Ch. 1, overruling *Re Bidwell* [1893] 1 Ch. 603; see also *Re Horsbury Bridge Co*, 11 Ch. D. 109; *Re Caloric Co*, 52 L.T. 846). See also CONCLUSIVE EVIDENCE.

"Personally or by proxy" does not avoid the necessity of some person being present to vote, i.e. either the shareholder must be present, or, if absent, his proxy must be present; therefore, voting papers are inadmissible, even on taking a poll, though that mode be directed by a chairman who, by the articles, has the power to direct the manner in which the poll is to be taken (*McMillan v Le Roi Mining Co* [1906] 1 Ch. 331; *Isaacs v Chapman* [1916] W.N. 28). See hereon *R. v Dover*, 72 L.J.K.B. 210, cited DEMAND, where Dasling J., said, "I should have been prepared to hold, had it been necessary, that a demand for a poll cannot be withdrawn after it has been accepted by a statement that a poll will be held, and the meeting has come to an end" (*Siemens v Burns* [1918] 2 Ch. 324).

In a company for private gain, the right to vote "is a right of property" (per Jessel M.R., *Pender v Lushington*, 6 Ch. D. 70, cited MEMBER, adopted by Buckley L.J., and Cozens-Hardy M.R. in *Osborne v Amalgamated Society of Railway Servants*, 80 L.J. Ch. 320). See Companies Act 1948 (c.38) Sch.1.

As to ballot meaning "lot" and not "secret vote", see *Eyre v Milton Proprietary* [1936] Ch. 244.

Stat. Def., Ballot Act 1872 (c.33) ss.15, 20; Representation of the People Act 1949 (12, 13 & 14 Geo. 6, c.68) s.171(1).

VOTER

See ENTITLED TO VOTE; CASTING VOTE.

VOTER. Stat. Def., Representation of the People Act 1983 (c.2) s.202.

See COUNTY; ELECTOR; LOCAL GOVERNMENT ELECTORS; OCCUPATION VOTER; OWNERSHIP; PARLIAMENTARY; PAROCHIAL ELECTOR.

VOTING SHARE CAPITAL. Stat. Def., Cash Ratio Deposits (Eligible Liabilities) Order 1998 (SI 1998/1130) art.2(1).

VOUCH TO WARRANTY. See Co Litt. 101B, 102A.

VOUCHER. Local Government Act 1933 (c.51) s.24: does not include an application for a loan (*R. v Monmouthshire CC, Ex p. Smith*, 153 L.T. 338).

Stat. Def., Finance Act 1982 (c.39) s.44.

See CASH VOUCHER; FACE-VALUE VOUCHER.

VOYAGE. A voyage is a transit at sea from one terminus to another (*Glaholm v Hays*, 10 L.J.C.P. 98; *Valente v Gibbs*, 6 C.B.N.S. 270). "The word 'voyage', standing alone, has an extensive meaning; it means a passing by water from one place or port to another place or port" (per Byles J., *Barker v McAndrew*, 18 C.B.N.S. 759). But see per Coleridge C.J., *R. v Southport, nom. Southport v Morris* [1893] 1 Q.B. 359, cited SHIP. See LIBERTY TO CALL. Cp. PASSAGE.

"Voyage" "is French in origin, and its original meaning is 'to move afar', or 'go abroad', as applied to persons or things leaving the place to which they belonged. The word has inherent in it the sense of movement, and I have no doubt was originally confined to a passing from one given spot to one other given spot; and that was the meaning attached to the word when it was adopted into the English language. But the meaning of the word has undoubtedly changed, and especially as applicable to ships. I believe the more modern meaning of the word is, so far as an English ship is concerned, the passing of that ship from home to a given port and back again to home, and that this is the meaning which the framers of the Merchant Shipping Act 1894 (c.60), had in view when the wording of s.115(5) was considered: 'The agreements may be made for a voyage, or, if the voyages of the ship average less than six months in duration, may be made to extend over two or more voyages'. I read this to contemplate such voyages as those of transatlantic, or Peninsular and Oriental, liners; or even cross-Channel steamers, which leave their home port, go abroad, and return home—each thus completing a voyage.

"But it is not inconsistent with this reading of the word 'voyage' that the vessel should, after leaving home, go to more than one port abroad before returning home; on the contrary, it would seem to be consistent that, both on the passage out and the passage back, the British vessel should go to more than one foreign country, when she should unload or load and trade, before finally loading for her return home. We speak of 'a voyage round the world', which infers stopping at many places in transit; but it is all one voyage up to and until the return of the ship home to this country.

"The further question arises: given that the voyage ends within these home limits, at what place within these home limits does it end? The Merchant Shipping Acts, from 1729 downwards, do not, in terms, define 'the end of a voyage'" (per Bargrave Deane J., *The Scarsdale*, 74 L.J.P.D. & A. 135). The actual decision in that case was reversed ([1906] P. 103), but Williams L.J. said he entirely concurred in the foregoing definition of "voyage"; in that case the Court of Appeal held that articles by the seamen for a "voyage, not exceeding one year's duration", within stated limits, "and to end at such port in the United Kingdom or continent of Europe within home-trading limits as may be required by the master", were not contrary to Merchant Shipping Act 1894

s.114(2)(a); that the voyage to be ended was the voyage of the ship, and not of the cargo; and that, therefore, the seaman was not entitled to his discharge and payment of his wages at Southampton (where the ship had discharged her return-home cargo), that being contrary to the master's statement that the agreement was not then at an end and contrary to his request to the seaman to go on with the ship to Cardiff; this decision was affirmed in House of Lords [1907] A.C. 373. See also *Haylett v Thompson*, 80 L.J.K.B. 267. See also, as to what is the "end of the voyage", *R. v Abrahams* [1904] 2 K.B. 859, cited *ARRIVE*; *Re Istok SS and Drughorn*, 7 Com. Cas. 190.

As to when a voyage commences and is completed, see *Dahl v Nelson*, 12 Ch. D. 568; *DURING*; *NAVIGATION*; *Re Pyman and Dreyfus*, 24 Q.B.D. 152.

A voyage policy is one which covers the risk of a particular voyage; see hereon *Gambles v Ocean Marine Insurance*, 1 Ex. D. 8, 141. Cp. *TIME POLICY*. See also *Marine Insurance Act 1906* (c.61) s.25(1), stated *POLICY*.

"On a voyage": see *Eagle, Star & British Dominions Insurance Co Ltd v Reiner*, 43 T.L.R. 259.

"A voyage royall, is not onely, when the king himselfe goeth to warre, as Littleton here (s.95) saith, but also when his lieutenant or deputy of his lieutenant goeth . . . There is also another kind of voyage royall, namely when one goeth with the king's daughter beyond sea to be married etc." There is therefore a "voyage royall of warre, and a voyage royall of peace and amity" (Co. Litt. 69B). See *ESCUAGE*.

"Seaworthiness . . . for the voyage": see *SEAWORTHY*.

"Change of voyage": see *CHANGE*; *Marine Insurance Act 1906* (c.41) s.45.

See *NEAR THERETO AS SHE MAY SAFELY GET*; *NEGLIGENCE OR DEFAULT OF MASTER OR MARINERS*; *COLONIAL*; *FIRST VOYAGE*.

"Voyage" (fishing): Stat. Def., *Merchant Shipping Act 1894* (c.60) s.370.

"Voyage in home waters": Stat. Def., *Customs and Excise Act 1952* (c.44) s.204(4)(c).

VOYAGER. See *PASSENGER*.

VOYEURISM. Stat. Def., *Sexual Offences Act 2003* (c.42) ss.67 and 68.

VULNERABLE. "Vulnerable as a result of old age, mental illness . . . or physical disability" (*Housing Act 1985* (c.68) s.59(1)(c)). The opinion of a single medical officer is not an adequate basis on which to judge vulnerability under this section (*R. v Lambeth LBC, Ex p. Carroll* (1988) 20 H.L.R. 142). Vulnerable means vulnerable in a housing context (*R. v Bath City Council, Ex p. Sangermano* (1984) 17 H.L.R. 94). The mere fact that an applicant is an epileptic does not qualify him as vulnerable (*R. v Reigate and Banstead BC, Ex p. Di Domenico* (1988) 20 H.L.R. 153). A person who had a history of alcohol and drug dependence was not vulnerable since she could not show that she was less able to obtain suitable accommodation than the ordinary person (*Ortiz v Westminster City Council* (1993) 27 H.L.R. 364).

For the purposes of the *Domestic Violence, Crimes and Victims Act 2004* s.5(1), the meaning of "vulnerable" is discussed in *R. v Khan* [2009] EWCA Crim 2.

VULNERABLE ADULT. Stat. Def., s.80(6) of the *Care Standards Act 2000* (c.14).

Stat. Def., "a person aged 16 or over whose ability to protect himself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise" (*Domestic Violence, Crime and Victims Act 2004* (c.28) s.5).

Stat. Def., *Safeguarding Vulnerable Groups Act 2006* s.59.

W

WAFER. Wafer bread is not "bread" in the Rubric to the office for Holy Communion (*Hebbert v Purchas*, L.R. 3 P.C. 605, cited ORNAMENT; *Ridsdale v Clifton*, 2 P.D. 276, cited IT SHALL SUFFICE).

WAGE. "'Wage' is the giving security for the performing of any thing; as to wage law, and to wage deliverance" (Termes de la Ley). See PLEDGE.

To wage battle, or wager of battel: see Jacob, *Battel*; 3 Bl. Com. 337–341; for the form of it, 3 Bl. Com. Appendix iv; abolished by the Appeal of Murder, etc. Act 1819 (c.46), the last wager of battel being by Abraham Thornton, November, 1817, on his second trial for the murder of Mary Ashford. Cp. trial by battle, under BATTLE.

To wage deliverance: see Termes de la Ley, Gager de deliverance.

To wage law: see Termes de la Ley, Law; Jacob, *Wager of Law*; Co. Litt. 294B; 3 Bl. Com. 341–343. Abolished by Civil Procedure Act 1833 (c.42) s.13.

WAGER. What is a wager? See this question discussed, 40 J.P. 227.

See BET; GAMING CONTRACT; SUBSCRIPTION OR CONTRIBUTION.

WAGERING CONTRACT. "Contracts . . . by way of . . . wagering" (Gaming and Wagering Act 1845 (c.109) s.18). In order to constitute such a contract it is essential that each party might either win or lose (*Tote Investors v Smoker* [1968] 1 Q.B. 509).

See GAMING CONTRACT; TIME BARGAIN.

WAGERING POLICY. Is otherwise called an honour, or PPI, policy.

WAGES. "A deduction from his wages" (Wages Act 1986 (c.48) ss.1, 5, 7, 8). Failure to pay a bonus was not a wage deduction within the meaning of s.5 (*Barlow v AJ Whittle (t/a Micro Management)* [1990] I.C.R. 270). Where an employer sought to recover an amount in excess of the wages due to an employee this could still be "a deduction" from the employee's "wages" for the purposes of this section (*Alsop v Star Vehicle Contracts* [1990] I.C.R. 378; *New Centurion Trust v Welch* [1990] I.C.R. 383; *Home Office v Ayres*, *The Times*, October 22, 1991; *Murray v Strathclyde Regional Council* [1992] I.R.L.R. 396). A payment in lieu of notice has been held not to be "wages" for the purposes of s.7 of this Act (*Koumarvous v Masterton* [1990] I.C.R. 387) so that where an employer stopped an employee's cheque for payment in lieu of notice this was not "a deduction from his wages" within the meaning of s.5. However, unpaid commission and holiday pay due under the employee's contract were held to be deductions from wages (*Delaney v Staples* [1992] 2 W.L.R. 451). Where an employee's termination payment included "salary in lieu of notice" described as "net" and was less than the gross pay due in this regard, it was held that pay in lieu of notice did not fall within the definition of "wages" in s.7 so that the difference between the amount paid and the gross figure was not a "deduction" within the meaning of s.5 (*Foster Wheeler (London) v Jackson* [1990] I.C.R. 757). But where there was an agreement to pay a sum in lieu of notice and the only dispute was as to which of two sums was appropriate, the claim was for a liquidated sum properly payable as wages within the meaning of s.8(3) rather than for unliquidated damages for breach of

WAGES

contract. Such payment in lieu could amount to “wages” within the meaning of the Act (*Janstorp International (UK) v Allen* [1990] I.C.R. 779). The unilateral withdrawal of a wage supplement paid to an employee in respect of the loss of his right to cash pay after the abolition of the Trade Acts by the 1986 Wages Act constituted a “deduction from any wages” within the meaning of s.1(1) of the 1986 Act (*McCree v Tower Hamlets LBC* [1992] I.C.R. 99). Payment of commission which was expressed to be discretionary and non-contractual was held to come within the definition of “wages” in s.7 (*Kent Management Services v Butterfield* [1992] I.C.R. 272). Unpaid commissions could amount to “wages” within the meaning of s.7 and refusal to pay such commissions could amount to an unlawful deduction within the meaning of s.1(1) (*Blackstone Franks Investment Management Ltd v Robertson*, *The Times*, May 4, 1998).

A ship’s officer’s severance pay under National Maritime Board terms is not “wages” giving rise to a lien over the ship (*Tacoma City* [1991] 1 Lloyd’s Rep. 330).

For the purposes of s.23 of the Employment Rights Act 1996 holiday pay is “wages” and therefore the withholding of holiday pay is an unlawful deduction of wages (*List Design Group Ltd v Catley* [2002] L.C.R. 686, EAT).

For the categorisation of certain payments in lieu, but not all, as wages, see *Re Huddersfield Fine Worsteds Ltd* [2005] EWCA Civ 1072.

Stat. Def., Wages Act 1986 (c.48) s.7; includes emoluments (Merchant Shipping Act 1995 (c.21) s.313(1)).

See also EMPLOYMENT; IN THE COURSE; PROPERLY.

Stat. Def., Payment of Wages Act 1960 (c.37) s.7(1).

Payments in respect of annual leave are within the meaning of “wages” for the purposes of the Employment Rights Act 1996 s.27 (*Revenue and Customs Commissioners v Stringer* [2009] UKHL 31).

See INCOME; PAYMENT; PERSONAL LABOUR; SALARY; TRUCK ACT.

WAGES OR SALARY. Redundancy payments or payments in respect of unfair dismissal are not “wages or salary” within the meaning of the Insolvency Act 1986 (*Re Allders Stores* [2005] EWHC 172, Ch).

Damages for wrongful termination are not “wages or salary” for the purposes of priority payments under Sch.1B to the Insolvency Act 1986 inserted by s.248 of the Enterprise Act 2002 (*Re Leeds United Association Football Club Ltd*, T.L.R., September 4, 2007 (Ch)).

WAGGON. See CART; STAGE WAGGON.

WAGGON ROAD. See CART ROAD.

WAIFF. “‘Waife’ is when a theefe hath feloniously stollen goods, and being neerly followed with hue and cry, or else overcharged with the burden or trouble of the goods, for his ease sake and more speedy travailing, without hue and cry, flyeth away, and leaveth the goods or any part of them behinde him, etc. then the Kings officer, or the reeve or baylife to the lord of the mannor (within whose jurisdiction or circuit they were left) that by prescription, or grant from the King, hath the franchise of waife, may seise the goods so waived to their lords use, who may keepe them as his owne proper goods, except that the owner come with FRESH SUIT after the felon, and sue an appeale, or give in evidence against him at his arraignment upon the indictment, and he bee attainted thereof, etc. In which cases the first owner shall have restitution of his goods so stollen and waived” (Termes de la Ley). See also *Foxley’s Case*, 5 Rep. 109 l.

“‘Waifs’, *bona waviata*, are goods stolen, and waived or thrown away by the thief in his flight, for fear of being apprehended” (1 Bl. Com. 296).

See also FUGITIVE GOODS; Cowel; Jacob.

Cp. WAIVE.

WAINABLE. “*Terra wainabilis*”: see TERRA.

WAINAGE. Amerciament of a villein “salvo wainagio suo” (Magna Carta, c.14), i.e. his “team and instruments of husbandry” (4 Bl. Com. 379). “‘Wainagium’ is the contenment or countenance of the villein, wherewith he was to doe villein service, as to carry the dung of the lord out of the scite of the mannor unto the lords land and casting it upon the same, and the like; and it was great reason to save his wainage, for otherwise the miserable creature was to carry it on his back” (2 Inst. 28).

WAIT. (City of Gloucester (Eastgate Street) (Waiting Regulations) Order 1982 arts 3 and 5(1)). Where regulations permitted a licensed hackney carriage to “wait” at a hackney carriage stand, it was held that “wait” meant “waiting for a fare”, and did not authorise the parking there of a locked and mattended licensed hackney carriage (*Rodgers v Taylor* [1987] R.T.R. 86).

WAITER. See LANDING WAITER; *Whiteley v Burns* [1908] 1 K.B. 705, cited MALE SERVANT.

Waiters’ tips: see *Penn v Spiers & Pond* [1908] 1 K.B. 766, cited EARNINGS; TIPS; TRONC.

WAITH. See WRAK.

WAITING YOUR REPLY. Semble, these words at the end of a letter containing a distinct contractual offer, do not make the offer a mere proposal which the writer is at liberty to retract on receiving a reply; therefore, if the receiver of the letter accepts the offer (though only orally) the writer of it will be bound (*Watts v Ainsworth*, 31 L.J. Ex. 448).

WAIVE. A “waive” was a woman that was outlawed; “and shee is called ‘waive’, as left out or forsaken of the law, and not an outlaw as a man is; for women are not sworne in leetes to the King, nor to the law, as men are, who therefore are within the law, whereas women are not, and for that cause they cannot be said outlawed, in so much as they never were within it” (Termes de la Ley; Cowel).

Cp. WAIF.

WAIVER. A waiver is “the passing by of a thing, or a declining or refusal to accept it” (Jacob), i.e. an abandonment. Cp. renunciation; “Surrender by act or operation of law”, under SURRENDER; STANDING BY.

Waiver is express, or implied; express, when the person entitled to anything expressly and in terms gives it up, in which case it nearly resembles a release (see *Stackhouse v Barnston*, 10 Ves. 466); implied, when the person entitled to anything does or acquiesces (see ACQUIESCENCE) in something else which is inconsistent with that to which he is so entitled: “Delay, of itself, does not constitute waiver, but it may be such as to amount to evidence of waiver” (per Bowen L.J., *Selwyn v Garfit*, 38 Ch. D. 284).

In the case of bills of exchange and promissory notes, waiver is called renunciation (Bills of Exchange Act 1882 (c.61) s.62, and see s.16(2); waiver of notice of dishonour, see 1882 Act s.50(2); waiver of presentment, see 1882 Act s.46(2); waiver of protest, see 1882 Act s.51(9)).

In companies, the waiver clause in a prospectus was that in which the rights (of applicants for shares) under Companies Act 1867 (c.131) s.38 (see Companies Act

WAIVER

1985 (c.6) s.57), were waived; see hereon *Greenwood v Leather Shod Wheel Co* [1900] 1 Ch. 421. See also *Cackett v Keswick* [1902] Ch. 456; *Watts v Bucknall* [1903] 1 Ch. 766; *Calthorpe v Trechmann* [1906] A.C. 24; cited Knowingly. As to waiver of notice required in Companies Act 1908 (c.69) s.69(1); see *Express Engineering Works* [1900] 1 Ch. 466; *Re Oxted Motor Co* [1921] 3 K.B. 32.

Of covenants and conditions: see *Gibson v Doey, or Doeg*, 27 L.J. Ex. 37; *Re Summerson*, 69 L.J. Ch. 57, fn.; *Hepworth v Pickles* [1900] 1 Ch. 108; *Samuel v Dumas* [1924] A.C. 431.

Of crown escheats: see Intestates' Estates Act 1884 (c.71) s.6.

As between landlord and tenant, a forfeiture is waived, e.g. by acceptance of rent becoming due after knowledge of the facts giving rise to the forfeiture (*Goodright d. Walter v Davids*, Cowp. 803; *Arnsby v Woodward*, 6 B. & C. 519; *Whitchcot v Fox*, Cro. Jac. 398). See also *Davenport v Smith* [1921] 2 Ch. 370, and cases there followed. Even though the lease provides that no waiver by the lessor shall take effect, unless it is in writing (*R. v Poulson* [1921] A.C. 271). See *Atkin v Rose*, 92 L.J. Ch. 209. See also WHENEVER; a notice to quit, given by a landlord, is waived, e.g. by acceptance of rent, or (if given by a tenant) by payment of rent, for a period after the expiry of the notice (*Keith v National Telephone Co* [1894] 2 Ch. 147). Where a tenant of premises to which the Increase of Rent, etc. (Restrictions) Act 1920 (c.17), applied held over after notice to quit, acceptance of rent by the landlord was not a waiver: see *Davies v Bristow* [1920] 3 K.L. 428, followed in *Town Properties Development Co Ltd v Winter*, 37 T.L.R. 979.

"Waiver" (Finance Act 1963 (c.25) s.22(1)(4), now Income and Corporation Taxes Act 1970 (c.10) s.80(1)(4)). A sum paid by a tenant to his landlord to enable the tenant to keep a valuable lease liable to be forfeited for breach of covenants is a sum paid for a "waiver" of terms of a lease within the meaning of these sections (*Banning v Wright* [1972] 1 W.L.R. 972).

As to mortgages, liens, and sureties; waiver of mortgagor's rights prior to the exercise by mortgagee of power of sale: see *Selwyn v Garfit*, 38 Ch. D. 273; *Re Thompson and Holt*, 44 Ch. D. 492.

As to tender: see *Douglas v Patrick*, 3 T.R. 683.

As to tort, waiver of by claiming proceeds as a debt: see *Brewer v Sparrow*, 7 B. & C. 310; *Lythgoe v Vernon*, 29 L.J. Ex. 164; *Burn v Morris*, 3 L.J. Ex. 193; *Smith v Baker*, L.R. 8 C.P. 350; *Valpy v Sanders*, 5 C.B. 886; all of which cases were referred to in *Rice v Reed* [1900] 1 Q.B. 54.

There is no principle under which a plaintiff who has alternative causes of action in respect of the same wrong, one in contract and one in tort, "waives the tort" merely by bringing an action in contract. An action in tort is prevented by nothing less than judgment in the action in contract (*United Australia Ltd v Barclays Bank Ltd* [1941] A.C. 1).

The expression waiver is sometimes used in the sense of election, as where a person decides between two mutually exclusive rights (e.g. claiming *assumpsit* and waiving a tort). It is also used where a party expressly or impliedly gives up a right to enforce a condition or rely on a right to rescind a contract, or prevents performance, or announces that he will refuse performance or loses an equitable right by laches (*Smyth (Ross T) & Co v Bailey, Son & Co*, 162 L.T. 102).

As to trusts, waiver of breach of trust by long delay so that a claim founded thereon becomes a stale demand: see *Re Cross*, 20 Ch. D. 109; see also Lewin (15th edn), 768, waiver of trust for sale by the election of the beneficiaries to take the subject of the gift *in specie*; see Lewin (15th edn), 591.

"In most litigious situations the expression 'waiver' is used to describe a voluntary, informed and unequivocal election by a party not to claim a right or raise an objection which it is open to that party to claim or raise." (*Millar v Dickson* [2002] 3 All E.R. 1041, PC.)

Waiver of requirement for written notice, in insurance context; waiver by conduct: see *Diab v Regent Insurance Co Ltd* [2006] UKPC 29.

"Moreover Lord Hailsham himself said that 'When a contract is broken the injured party in condoning the fault may be said either to waive the breach or to waive the term in relation to the breach.' Lord Hailsham cannot, therefore, have meant that it is a legal solecism to speak of waiving a breach. Lord Simon also emphasised that a waiver is the giving up of a right. So it cannot be a legal solecism either to speak of waiving a right." (*Strategic Value Master Fund Ltd v Ideal Standard International Acquisition SARL* [2011] EWHC 171 (Ch).)

WAKE. A "wake" is a concourse for purposes of pleasure held usually on a feast day following after a vigil connected with the local patron saint or some religious purpose (*Wyld v Silver* [1963] Ch. 243). Cp. FAIR.

WALES. Stat. Def., Interpretation Act 1978 (c.30) Sch.1; including certain seas, Government of Wales Act 1998 (c.38) s.155(1) and (2).

WALK. A conviction of a woman that she was guilty of "walking with a member" of Cambridge University is bad, because the phrase does not connote that she was walking with him for an immoral purpose, nor that she was "suspected of evil" within the words of the charter of the University (*Ex p. Daisy Hopkins*, 61 L.J.Q.B. 240). Cp. NIGHT-WALKER; STREET WALKER.

A dog injured so that he can only go on three legs does not "walk", within a policy of insurance; in such a connection "'walking' means locomotion in the usual way, on four legs" (*Jacob v Gaviller*, 87 L.T. 26, cited MORTALITY).

"Walking possession": see *AW Ltd v Cooper & Hall Ltd* [1925] 2 K.B. 816; *National Commercial Bank of Scotland v Arcam Demolition and Construction* [1966] 2 Q.B. 593.

Walking possession means that a bailiff is not really in possession but, at the most, in constructive possession of the goods distrained (*Day v Davies* [1938] 2 K.B. 74 at 78).

"Public walks and pleasure grounds": see PLEASURE.

"Walk in a forest": see FOREST.

See also POSSESSION.

WALKING DISTANCE. The "walking distance" to any school within the meaning of s.39 of the Education Act 1944 (c.31) is to be measured along the shortest route which a child, accompanied if necessary, could walk with reasonable safety to school (*Rogers v Essex CC* [1986] 3 W.L.R. 689).

Stat. Def., Education Act 1996 (c.56) s.444(5).

WALKWAY. Stat. Def., Highways Act 1980 (c.66) s.35.

WALL. The ordinary sense of the "walls" of a building contemplates foundations and a roof (per Cave J., *Slaughter v Sunderland*, 60 L.J.M.C. 93).

WALTHAM

A wall "is, at any rate, something which will stand by itself" (per Russell C.J., *Badley v Cuckfield*, 64 L.J.Q.B. 571), in which it was held that an outer part of a new building constructed of thin sheets of galvanised iron next to which was a layer of felt with a matchboard lining on the inner side, was not a "wall" of "hard and INCOMBUSTIBLE materials" within a bye-law relating to new buildings.

House "with the walls belonging thereto": see *Fox v Clarke*, L.R. 9 Q.B. 565.

Although windows in the outer walls of a building may, in certain contexts and for certain purposes, be regarded as part of the walls, they cannot be so regarded for the purposes of a covenant in a lease whereby the landlord is responsible for keeping the main walls in repair (*Holiday Fellowship v Hereford* [1959] 1 W.L.R. 211). But a wall may be a "building" and a window may be a "building": see cases cited BUILDING.

Stat. Def., Highways Act 1980 (c.66) s.79(17).

"Party fence wall" and "Party wall" Stat. Def., Party Wall etc. Act 1996 (c.40) s.20.

See BANK; CROSS; DEAD WALL; EXTERNAL WALL; FRONT MAIN WALL; INCLOSING WALLS; PARTY-WALL; RETAIN; SEA WALL; GUARD; WING WALL.

WALTHAM. See BLACK ACT.

WANDER. Animals "wandering": see LOOSE; LYING ABOUT; STRAY.

"Wandering in the public streets" (Vagrancy Act 1824 (c.83) s.3). A woman sitting in a motor car is not "wandering in the public streets" (*Carnill v Edwards* [1953] 1 W.L.R. 290).

WANT. "In the want of", e.g. a certificate, does not connote that the thing cannot be obtained, or that the person spoken of is bound to obtain it if possible (per Bayley J., *Suart v Powell*, 1 B. & Ad. 273).

"Does not want": see LEFT.

"For want of" objects of preceding limitation: see DIE WITHOUT ISSUE.

See CONSENT.

WANTING A PILOT. "Wanting a pilot" (Pilotage Act 1825 (c.125) s.72: see Pilotage Act 1913 (c.31) s.48(1)(g)) is not to be confined to such vessels as are bound to take a pilot, but applies to any vessel the master or owner of which thinks fit to require one (*Lucey v Ingram*, 9 L.J. Ex. 196).

WANTON. "'Wantonly' means not having a reasonable cause. 'Wantonness' consists in the doing that which will annoy another, and which the party doing it knows will produce no results to himself" (per Willes J., *Clarke v Hoggins*, 11 C.B.N.S. 551, 552).

"Where the taxing officer is satisfied that an issue has been vexatiously and improperly put on the record so as to occasion a wanton and unnecessary increase in the amount of costs he is not to allow the costs of that issue" (per Sir Creswell Creswell *Allen v Allen and D'Arcy* (1860) 2 Sw. & Tr. 107). Telling a great deal less than the truth and being guilty of so much invention that the length of the trial is prolonged does not necessarily amount to a "wanton and unnecessary increase" so as to come within the above (*Bock v Bock* [1955] 1 W.L.R. 843).

See UNREASONABLE.

WAPENTAKE. "Is all one with that which wee call hundred" (Termes de la Ley; Cowel; 1 Bl. Com. 115). Cp. RAPE, para.(6).

WAR. "What constitutes a state of war is well described in Hall's International Law (4th edn), 63: 'When differences between states reach a point at which both parties resort to force, or one of them does acts of violence which the other chooses to look upon as a breach of the peace, the relation of war is set up, in which the combatants

may use regulated violence against each other until one of the two has been brought to accept such terms as his enemy is willing to grant” (per Mathew J., *Driefontein Mines v Janson* [1900] 2 Q.B. 343); there is no authority for the supposed doctrine that a subsequent state of war will relate back to a prior seizure so that the latter may be said to have been made whilst there was a state of war (*Driefontein*). *Driefontein Mines v Jason* was affirmed by Court of Appeal [1901] 2 K.B. 419, and by House of Lords, nom. *Jason v Driefontein Mines* [1902] A.C. 484. See also *Marais v General Officer Commanding, etc.* [1902] A.C. 109.

An alternative stipulation in a charterparty if “war” has commenced does not mean war in any part of the world, but means war between countries which would render the originally intended voyage unlawful (*Avery v Bowden*, 5 E. & B. 714; 6 E. & B. 953; 25 L.J.Q.B. 49; 26 L.J.Q.B. 3; 5 W.R. 45).

In a charterparty was held to include the hostilities between Japan and China, which were not preceded by a formal declaration or severance of diplomatic relations (*Kawasaki Kisen Kaisha Ltd v Mitsui Bussan Kaisha Ltd* [1939] 2 K.B. 544).

Whether a state of war exists is a question of international law, but in cases of doubt the view of the Government will be decisive (*Amin v Brown* [2005] EWHC 1670, Ch).

As to the effect of war on a contract: see *Ashmore v Cox* [1899] 1 Q.B. 436, cited IMPOSSIBLE.

“War, bombardment, military or usurped power” (in an insurance policy): see *Curtis & Sons v Matthews* [1919] 1 K.B. 425.

“During the present war” in a will construed as equivalent to “during the continuance of hostilities” (*Re Cooper* [1946] Ch. 109).

“Operations of war” (Finance Act 1941 (c.30) s.46) do not include death in a car accident (*Re Pitt, Mendel v Att-Gen* [1945] 173 L.T. 272).

Stat. Def., Validation of War-time Leases Act 1944 (c.34) ss.2, 7.

See CIVIL WAR; CONTRABAND; LEVY WAR; PRISONER OF WAR; SHIP.

WAR CLAUSE. The expression “and war clause” is so vague and uncertain that its introduction into a contract for the sale of goods renders the contract void for uncertainty (*Bishop & Baxter v Anglo-Eastern Trading & Industrial Co* [1944] K.B. 12).

WAR CRIME. Stat. Def., art.8.2 of the Statute of the International Criminal Court, done at Rome on July 17, 1998, as applied by s.50(1) of the International Criminal Court Act 2001 (c.17) and as set out in Sch.8 to that Act.

WAR INJURIES; WAR SERVICE INJURIES. Personal Injuries (Emergency Provisions) Act 1939 (c.82) s.8: does not include injuries caused by the negligence or breach of duty (*Baker v Bethnal Green BC* [1945] 1 All E.R. 135; cp. *Taylor v Sims & Sims*, 167 L.T. 415); nor injuries caused by trespass (*Billings v Reed* [1945] K.B. 11); the definition does not include a purely mental injury (*Ex p. Harries* [1945] K.B. 183); an injury caused by falling into a bomb crater is not a war injury (*Greenfield v London & North Eastern Railway* [1945] K.B. 89); nor the aggravation of the applicant’s condition by the sight of the applicant’s bomb-damaged house (*Young v Minister of Pensions*, 170 L.T. 183). See also *Cameron v Minister of Pensions* [1945] S.L.T. 337 (injury from falling into a dock in the blackout); *Minister of Pensions v French* [1946] K.B. 260 (injury in blackout); *Minister of Pensions v Walton*, 174 L.T. 236 (injury while proceeding to place of duty). The definition does not include injuries suffered by the collapse of a roof four years after it had been damaged (*Pope v St. Helen’s Theatre*

[1947] K.B. 30); but it does include injury caused when an unexploded bomb exploded on being tampered with (*Minister of Pensions v Chennell* [1947] K.B. 250), and injury from a fall when running to shelter from a flying bomb (*Evans v Minister of Pensions* [1948] 1 K.B. 1). See also *Howgate v Bagnall* [1951] 1 K.B. 265, cited *IMPACT*.

Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939 (c.83) s.10; Pensions (Mercantile Marine) Act 1942 (c.26) ss.1, 5; the aggravation of organic disease is not a war injury within s.10 of the 1939 Act, but may be a war service injury within s.1 of the 1942 Act (*Re Saffell* [1945] K.B. 259); the death of a seaman run down by an army lorry during shore leave is not a "war injury" within s.10 of the 1939 Act (*Kemp v Minister of Pensions*, 114 L.J.K.B. 309); immediate physical consequences arising out of shock from finding a superior officer hanging dead in a store room would be a "war injury" (*Re Drake* [1945] 1 All E.R. 576). See also *Minister of Pensions v Nugent*, 115 L.J.K.B. 208 (injuries not sustained at sea); *Minister of Pensions v Higham* [1948] 2 K.B. 153 (civilian assistant in NAAFI); *Staynings v Minister of Pensions* [1947] 1 All E.R. 347 (injury on a cable ship in Iceland not due to war conditions).

Stat. Def., Income and Corporation Taxes Act 1970 (c.10) s.421(6).

WAR RISK. A marine risk does not become a war risk merely because the conditions of war may make it more probable that the marine risk will operate and a loss be caused. Thus sailing without lights or sailing in convoy does not of itself convert marine risks into war risks (*Yorkshire Dale SS Co v Minister of War Transport* [1942] A.C. 691).

"War risk for buyer's a/c", in a c.i.f. contract of sale, means that the risk of war is that of the buyer alone, and that if he desires to cover the risk he must take out the policy himself: see *C Groom Ltd v Barber* [1915] 1 K.B. 316. A vessel which was torpedoed and subsequently towed some distance and then driven ashore by a storm, becoming a total wreck, was held to be lost owing to war, and not marine risk: see *Lobitos Oil Fields Ltd v Admiralty Commissioners*, 34 T.L.R. 466.

"War risk in an insurance policy includes a civil war risk (*Pesqueras y Secaderos de Bacalao de Espana SA v Beer* [1949] 1 All E.R. 845).

"War risk" (Capital Allowances Act 1968 (c.3) s.33(7)). The dumping of shells after the end of a war is not a warlike operation, and the loss of a dredger by explosion after it had sucked some up, was not a loss due to "war risk" within the meaning of this section (*Costain-Blankevoort Dredging Co v Davenport* [1978] T.R. 369).

Stat. Def., War Risks Insurance Act 1939 (c.57) s.6; Marine and Aviation Insurance (War Risks) Act 1952 (c.57) s.10(1); Capital Allowances Act 1968 (c.3) s.33.

WARD. As to wardship in the old tenures, see 2 Bl. Com. 67, 87, 97; *Termes de la Ley*, Gard, Gardeine; Cowel, Gard, Gardeyne.

"Ward of court" properly means a person under the care of a guardian appointed by the court; but the term has been extended to infants who are brought under the authority of the court by an application to it on their behalf, though no guardian is appointed by the court (*Brown v Collins*, 25 Ch. D. 60). This term covers infants brought under the authority of the court by an application to it on their behalf, though no guardian is appointed (*Re E. (An Infant)* [1956] Ch. 23).

"Casual ward": see CASUAL.

"Municipal wards": see Local Government Act 1933 (c.51) s.25.

See WATCH; NURTURE.

WARECTUM. "Warectum, or wareccum, or varectum doth signifie fallow, but in truth the word is verractum" (Co. Litt. 5B). See also Cowel.

WAREHOUSE. "A 'warehouse', in common parlance, certainly means a place where a man stowes or keeps his goods which are not immediately wanted for sale" (per Rolfe B., *R. v Hill*, 2 Moo. & R. 459); and it was there held that a cellar used for such a stowage was a "warehouse" within Larceny Act 1826 (c.29) s.15. In 1751, on Clerks of Assize Act 1698 (c.12), it was held that "warehouses" meant "not mere repositories for goods but such places where merchants and other traders keep their goods for sale in the nature of shops, and whither customers go to view them" (*R. v Howard*, Foster, 78; see also *R. v Godfrey*, Leach, 288; *Haynes v Ford* [1911] 2 Ch. 237, cited SHOP).

"Warehouse", in Factory and Workshop Act 1901 (c.22): see per Day J., *Rogers v Manchester Packing Co* [1898] 1 Q.B. 344, cited BLEACHING; FACTORY.

"Warehouse" (Factories Act 1937 (c.67) s.105(1); Factories Act 1961 (c.34) s.125) includes a dock transit shed (*Fisher v Port of London Authority* [1962] 1 W.L.R. 234).

Probably of much application to the Factories Acts, and also of general utility, is the meaning of "warehouse" as used in the (repealed) Workmen's Compensation Acts. What was a "warehouse" under the latter Act was a question of "mixed fact and law" (per Collins M.R., *Green v Britten*, below). "There is no definition of 'warehouse' in the Act, and we know that the term is used in a variety of senses; but I think that, as used in that Act, it does not include a retail shop, otherwise every such shop would come under the provisions of the Factory Acts, which have not hitherto, so far as I am aware, been held applicable to them. While it may be difficult to define 'warehouse', I am of opinion that, as used in this Act, it involves the idea of a place normally of considerable size, mainly used for the storage of goods in bulk or in large quantities, and in which, consequently, the dangers incident to the handling of goods in bulk or in large quantities might naturally arise" (per Kinross L.P., *Colvine v Anderson*, 40 Sc. L.R. 233). "It seems to me that that defines, as accurately as possible, what is a 'warehouse' within the meaning of the Act" (per Collins M.R., *Green v Britten* [1904] 1 K.B. 356), in which case it was held that a railway arch, adapted for and used as a storage place for goods from which goods were delivered to customers who made their purchases in a shop on the other side of the road, was a "warehouse" ([1904] 1 K.B. 350). So of a carrier's place for storing goods in their transit, though such goods generally remained there for a few hours but sometimes for a night and, in special cases, for a few nights (per Stonor, county court judge, *Adams v Great Western Railway*, 48 S.J. 134).

But a retail shop, even though it be very large and where goods of great amount are kept, was not a "warehouse" within the Act (*Burr v Whiteley*, 19 T.L.R. 117; *Colvine v Anderson*, above; per Collins M.R., *Green v Britten*, above); but see *Moreton v Reeve* [1907] 2 K.B. 401, where it was held that there is no absolute rule of law that a store attached to a retail shop cannot be a warehouse within the meaning of the Act. Cp. *Haynes v Ford* [1911] 2 Ch. 237, cited SHOP.

A large yard, used as a dumping-ground for waste and refuse materials, was held not a "warehouse", even though some of the materials were sold there (*Buckingham v Fulham*, 21 T.L.R. 511). So, a timber merchant's yard—bounded on two sides by walls belonging to adjoining owners, at the back by a wooden fence or paling, and in front by a similar fence in which were two wooden doors—was not a "warehouse" (per Bray, county court judge, *Carter v Shipway*, 50 S.J. 311, cited dicta of Collins L.J., in

WAREHOUSE

Haddock v Humphrey [1901] 1 Q.B. 609, cited WHARF, and judgment of Cozens-Hardy L.J. in *Buckingham v Fulham*, above). So, a municipal stone-yard, used for the storage of pipes, cement and other materials for road-making and for the breaking of road metal and its storage in heaps, was not a "warehouse" (*M'Ewan v Perth Magistrates*, 7 Fraser 714). See also *Wilmott v Paton* [1902] 1 K.B. 237; ACTUAL USE OR OCCUPATION; FACTORY.

"Warehouse" or "other building" (Representation of the People Act 1832 (c.45) s.27): see *Watson v Cotton*, 5 C.B. 51.

In *R. v Edmundson* (28 L.J.M.C. 213) a warehouse was included in "other place" in the phrase "dwellinghouse, outhouse, yard, garden, or other place".

Warehouse receipts: see *Tennant v Union Bank of Canada* [1894] A.C. 31, cited BANKING. See *Graham v Shiels*, 8 Sc. L.T. 368, cited DWELLINGHOUSE.

"Warehouse to warehouse", in Clause No.6, Institute Cargo Clauses in marine insurance policy: see *Re Traders' General Insurance Association Ltd* [1924] 2 Ch. 187. See RISK.

"Wholesale warehouse" (Town and Country Planning (Use Classes) Order 1972 (SI 1972/1385) Sch. Class X). The Court of Appeal held that it was open to the Secretary of State on a planning appeal, as in this case, to hold that a "cash and carry wholesale warehouse" was not a "wholesale warehouse" within the meaning of this Class (*LTSS Print and Supply Services v London Borough of Hackney* [1976] Q.B. 663). A "warehouse" means a place at which goods are stored, and premises used primarily for the sale of retail goods are not being used as a warehouse within the terms of a planning permission (*Monomart (Warehouses) v Secretary of State for the Environment* (1977) 34 P. & C.R. 305). A building used for the examination of used tyre casings to see whether they would be suitable for remoulds, and the storing of large numbers awaiting despatch to a remoulder was a "wholesale warehouse" within the meaning of Class X (*Crusabridge Investments v Casings International* (1979) T.C. Leaflet No.2799).

"Warehouse" (Vagrancy Act 1824 (c.83) s.4) did not include a room in a Post Office building used as a sorting office and containing a large number of letters and parcels kept there pending delivery (*Holloran v Haughton* [1976] Crim. L.R. 270).

Stat. Def., Spirits Act 1880 (c.24) s.3; Merchant Shipping Act 1894 (c.60) s.492; Customs and Excise Management Act 1979 (c.2) s.1.

See EX QUAY OR WAREHOUSE; WHARF.

WAREHOUSE CERTIFICATES/RECEIPTS. "4. It should be noted that, when used in trade and financing, these documents are given various names, though probably the most common is 'warehouse receipts'. In this case, the documents are called 'warehouse certificates'. The court was told that in Chinese it is the same word, and can be translated either way.

54. Warehouse receipts are common instruments in trade and finance, and may contain, or evidence, a contract between the warehouse and the party on whose behalf the goods are stored. In the present case, the receipts in dispute were made payable to the order of the bank which was providing finance for trading in warehoused metal. The receipts thereby constituted the bank's security, or more accurately an essential part of it.

55. A warehouse receipt represents goods in the possession of a warehouse. The document gives a description of the goods, and is a receipt for the goods stored. At common law, warehouse receipts are not treated as negotiable documents of title

(unlike bills of lading). However, though not in itself conferring possession of the goods on the holder, possession of a warehouse receipt in effect gives the holder the right to possession of the goods. The evidence in this case, for example, is that without receiving the receipt back, the warehouse will not release the goods." (*Impala Warehousing and Logistics (Shanghai) Co Ltd v Wanxiang Resources (Singapore) PTE Ltd* [2015] EWHC 811 (Comm).)

WAREHOUSEMAN. "This is a term well understood in London, and means a person who buys and sells linens, muslins, silks, and woollen goods by wholesale; and does not, it should seem, include in it every person who owns or keeps a warehouse" (Arch. Bank. (11th edn), 37; this comment was on "warehousemen" as contained in the late bankruptcy definition of "trader"). See also *Clark v Denton*, 1 B. & Ad. 102, 103.

In Explosives Act 1875 (c.17) s.108, "'warehouseman' includes all persons owning or managing any warehouse, store, wharf, or other premises, in which goods are deposited".

In Merchant Shipping Act 1894 (c.60) s.492, "'warehouseman' means the occupier of a 'warehouse' as" therein defined.

See COMMON CARRIER.

WARES. See GOODS, WARES, AND MERCHANDISE; WARE.

WARETTUM. A synonym for wreckum maris, wreck (Hale, De Jure Maris, Ch.7); but in Ch.6, Hale speaks of "*Littus Maris*, sometimes called *marettum*, sometimes *warettum*". See also MARETTUM; SHORE.

WARLIKE. "Warlike operations, whether before or after declaration of war": see *Robinson Gold Mining Co v Alliance Insurance* [1902] 2 K.B. 489, affirmed in House of Lords [1904] A.C. 359. See also *British SS Co v Green* [1921] A.C. 99, where the meaning of the words "warlike operations", in a charterparty, was fully considered. For further examples, see *Moor Line Ltd v R.*, 36 T.L.R. 799; *Harrisons Ltd v Shipping Controller* [1921] 1 K.B. 122; *The Caroline*, 37 T.L.R. 617; *Hindustan SS Co v Admiralty Commissioners*, 37 T.L.R. 856; *Att-Gen v Ard Coasters Ltd* [1921] 2 A.C. 141; *Richard de Larrinaga Owners v Admiralty Commissioners* [1921] 2 A.C. 141; *Re P & O Branch Service* [1923] A.C. 175; *Adelaide SS Co v R.* [1923] 1 K.B. 59; *Atlantic Transport Co v Director of Transports*, 38 T.L.R. 160; *Eagle Oil Transport Co Ltd v Board of Trade*, 42 T.L.R. 201; *Board of Trade v Cayzer, Irvine & Co*, 96 L.J.K.B. 872; *Clan Line Steamers Ltd v Board of Trade* [1929] A.C. 514; *Board of Trade v Hain SS Co* [1929] A.C. 534. See *Yorkshire Dale SS Co v Minister of War Transport* [1942] A.C. 283. A ship proceeding in ballast to a port from which she was to proceed on a warlike operation was held not to be engaged in a warlike operation within Charterparty T. 99 (*Wharton (Shipping) Ltd v Mortlemain* [1942] 2 K.B. 283). See also *Larrinaga SS Co v R.* [1945] A.C. 246 (ship returning empty from war base with a view to derequisitioning not on warlike operations); *Athel Line v Liverpool & London War Risks Association* [1946] K.B. 117 (vessel at anchor while carrying oil to Royal Navy engaged in warlike operation); *Liverpool & London War Risks Insurance Association v Ocean SS Co* [1948] A.C. 243 (carrying a deck cargo of war stores in North Atlantic winter weather and proceeding at full speed in a gale under Government orders a warlike operation); *Clan Line Steamers Ltd v Liverpool & London War Risks Association* [1943] 1 K.B. 209; *Shaw Savill and Albion Co Ltd v Commonwealth*, 66 C.L.R. 344.

See CONSEQUENCES.

WARN. A defendant is not “warned” within the meaning of s.179(2)(a) of the Road Traffic Act 1972 (c.20) unless he both hears and understands the warning (*Gibson v Dalton* [1980] R.T.R. 410). An interview by a police constable concerning the accident is not a warning within the meaning of this section (*Bentley v Dickinson* [1983] R.T.R. 356).

WARNING. Motor Car Act 1903 (c.36) s.9(2) (see Road Traffic Act 1930 (c.43) s.21); see *Parker v Cole*, 127 L.T. 152.

The meaning of “warning” in a labour dispute was discussed in *Hodges v Webb* [1920] 2 Ch. 70, cited COERCION; see also *Pratt v B.M.A.* [1919] 1 K.B. 244.

WARP. “‘Warp’ is a denomination of some kind of thread prepared to be woven and used in manufacture; it is, in itself, something ‘prepared for manufacturing goods’” (*R. v Ashton*, 2 B. & Ad. 756).

WARPLE WAY. See *Serff v Acton*, 31 Ch. D. 680.

WARRANT. “Warrant” has two frequent meanings—

(a) A document (ordinarily issued by a magistrate) for the apprehension of an accused person, in order to compel him to appear and answer the charge brought against him (4 Bl. Com., Ch. 21), or to search for property with respect to which an offence against the Larceny or Theft Acts is suspected to have been committed.

(b) A document authorising something to be done, or for the delivery of goods, or for the payment of money.

“Warrant for the delivery of goods” (Forgery Act 1861 (c.98) s.23); included a pawnbroker’s ticket (*R. v Morrison*, 28 L.J.M.C. 210); see also AUTHORITY OR REQUEST.

“Warrant for goods”: see Stamp Act 1891 (c.39) s.111. “Warrant for goods” takes the place of, and its definition (in Stamp Act 1891 (c.39) s.111) is nearly similar to that of, “dock warrant”, in the Schedule to Probate Duty Act 1860 (c.15). A mere acknowledgment by a warehouseman of the receipt of a delivery order is not a “warrant for goods”; but if it acknowledges that, by virtue of the order, the transferee has acquired the right to the goods mentioned in the order, subject to no other condition than the payment of the warehouse rent, then it is a “warrant for goods”, for it is “evidence of the title” of the transferee to the goods, at any rate as between him and the warehouseman by whom such a warrant is to be made (*Distillers Co v Inland Revenue Commissioners*, 36 Sc. L.R. 538).

“Warrant to vacate”: see *Firth v Inland Revenue Commissioners* [1904] 2 K.B. 207, cited DISCHARGE.

A warrant of attorney was a mode of giving a creditor security by his debtor authorising a solicitor to confess judgment against the debtor for an amount agreed on: see hereon Warrants of Attorney Acts 1822 (c.39) and 1843 (c.66); Debtors Act 1869 (c.62) ss.24–28; *Cook v Fowler*, L.R. 7 H.L. 27. Cp. POWER OF ATTORNEY.

“Warrant for the arrest” of a person failing to attend for public examination: see r.76 of the Companies Winding-up Rules 1890; r.13 of the Companies Winding-up Rules 1892. See Companies (Winding-up) Rules 1949 (SI 1949/330) r.66.

“Warrant to arrest a person in connection with an offence” (Magistrates’ Courts Act 1980 (c.43) s.125(4) as amended by Police and Criminal Evidence Act 1984 (c.60) s.33). A warrant issued under s.16(1) of the Powers of Criminal Courts Act 1973 (c.62) to arrest a person for the breach of a community service order was a “warrant” within the meaning of s.125(4) (*Jones v Kelsey* [1987] Crim. L.R. 392).

“Share warrant”: see SHARE, at end.

“Treasury warrant”: see TREASURY.

Stat. Def., Dividends and Stock Act 1869 (c.104) s.6; Extradition Act 1870 (c.52) s.26; National Debt Act 1870 (c.71) s.3; Government Annuities Act 1929 (c.29) s.58.

See ANY OTHER WARRANT; CHEQUE.

WARRANT OF CONTROL. Stat. Def., Tribunals, Courts and Enforcement Act 2007 s.62(4).

WARRANTED FREE FROM AVERAGE. “Warranted free” means that the insurers are not to be liable for the things to which the warranty applies (*Cory v Burr*, 52 L.J.Q.B. 657).

“Warranted free of all average” “means that the underwriters are only to be liable in the event of a total loss” (per Smith M.R., *Price v Maritime Insurance* [1901] 2 K.B. 412). See also *Continental Grain Co (Inc) v Twitchell* [1945] 1 All E.R. 357.

See AVERAGE; STRANDING; WARRANTY; TOTAL LOSS.

WARRANTED HIGHEST RATE. As to this phrase in a Lloyd’s policy, see *Walker v Uzielli*, 1 Com. Ca. 452, which see for “warranted same premiums and conditions”.

WARRANTED IN PORT. This phrase usually means in the port from which the voyage is to commence (*Colby v Hunter*, Moo. & M. 81).

See IN PORT.

WARRANTED SOUND. Horse sold “warranted sound, for one month”, means that the warranty is to continue in force for one month only, and that complaint of unsoundness must therefore be made within one month of the sale (*Chapman v Gwyther*, L.R. 1 Q.B. 463; see also *Bywater v Richardson*, 3 L.J.K.B. 164).

See SOUND; VICE.

WARRANTY. “A warranty is an express or implied statement of something which the party undertakes shall be part of a contract, and though part of the contract yet collateral to the express object of it. But in many of the cases, the circumstances of a party selling a particular thing by its proper description has been called a warranty and the breach of such a contract a breach of warranty; but it would be better to distinguish such cases as a non-compliance with a contract which a party has engaged to fulfil; as if a man offers to buy peas of another and he send him beans, he does not perform his contract; but that is not a warranty; there is no warranty that he should sell peas; the contract is to sell peas and if he sends him anything else in their stead it is non-performance of it” (per Abinger C.B., *Chanter v Hopkins*, 8 L.J. Ex. 16; quoted by Martin B., *Azemar v Casella*, 36 L.J.C.P. 264).

“The proper significance of the word ‘warranty’ in the law of England is an agreement which refers to the subject-matter of a contract, but, not being an essential part of the contract either intrinsically or by agreement, is collateral to the main purpose of such a contract. Yet irrespective of this the word came to be employed in England when what was really meant was something of a wider operation, a pure condition” (per Lord Haldane, *Dawsons Ltd v Bonnin* [1922] 2 A.C. 413).

In essence warranty is contractual in its nature. A statement which is not contractual cannot be converted into a cause of action by calling it a warranty (*Finnegan v Allen* [1943] K.B. 425).

A “warranty” denotes a binding promise. The word is also used to denote a subsidiary term in a contract as distinct from a vital term which is called a “condition” (*Oscar Chess v Williams* [1957] 1 W.L.R. 370).

WARRANTY

If, in the course of dealings for a contract, a representation is made which was intended to be acted on, and was in fact acted on, that was *prima facie* ground for inferring that the representation was a “warranty” (*Dick Bentley Productions v Harold Smith (Motors)* [1965] 1 W.L.R. 623).

“It was rightly held by Holt C.J. (*Crosse v Gardner*, Carth. 90; 3 Mod. 261; *Medina v Stoughton*, Salk. 210), and has been uniformly adopted ever since, that an affirmation at the time of sale is a warranty, provided it appear on evidence to have been so intended” (per Buller J., *Pasley v Freeman*, 3 T.R. 51). See also *De Lassalle v Guildford* [1901] 2 K.B. 215. In that case a parol affirmation that the drains of a house were in good condition was held to amount to a warranty, and was collateral to the written agreement for the letting of the house, and could accordingly be relied on and given in evidence by the tenant.

In sale of goods, “‘warranty’ means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated: As regards Scotland, a breach of warranty shall be deemed to be a failure to perform a material part of the contract” (Sale of Goods Act 1979 (c.54) s.61(1)). Speaking generally, a sale of goods implies a warranty of title but not of quality (2 Bl. Com. 451), except as to title, where the circumstances negative the implication; or where, as to quality, the implication arises when there is a stipulated quality or when the goods are supplied for a specified purpose (Add. C. (11th edn), 559 et seq.). It may be express or implied, (Sale of Goods Act, above, s.11(1)).

Generally “there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale” (Sale of Goods Act 1893, s.14); the exceptions are contained in the subsections to s.14; on subs.(1), see MAKE KNOWN, *Gillespie v Cheney* [1896] 2 Q.B. 59, cited ARTICLE; *Manchester Liners v Rea Ltd* [1922] 2 A.C. 74; and *Clarke v Army & Navy Co-operative Society* [1903] 1 K.B. 155; on subs.(2) see MERCHANTABLE. See also *Wallis v Pratt* [1911] A.C. 394, cited DESCRIPTION, in which case see per Fletcher Moulton L.J. as to the difference in usage between “warranty” and “condition”. See also *Baldry v Marshall* [1925] 1 K.B. 260.

Semble, an express warranty does not exclude an implied warranty that is not inconsistent with it (*Douglas v Milne*, 23 Rettie 163). See also *Medway Oil, etc. Co v Silica, etc. Corp*, 33 Com. Cas. 195.

As to the measure of damages for breach of warranty on sale of goods, see LOSS; *Finlay & Co v Kwik Hoo Tong* [1929] 1 K.B. 400.

As to the remedy for breach of warranty, see Sale of Goods Act 1893 s.53; *Salter v Hoyle & Smith* [1920] 2 K.B. 11.

Implied warranty of authority to do an act: see *Starkey v Bank of England* [1903] A.C. 114. Cp. *Sheffield v Barclay* [1905] A.C. 392, applied in *Bank of England v Cutler* [1908] 2 K.B. 208; *Att-Gen v Odell* [1906] 2 Ch. 47, cited RECTIFY; HOLD OUT; *Edwards v Porter* [1925] A.C. 1.

In charterparties and marine insurances, “warranted” or “warranty” is, and for many years has been, synonymous with “condition” (per Williams J., *Behn v Burness*, 32 L.J.Q.B. 205; see also *Barnard v Faber* [1893] 1 Q.B. 340), strictly binding on the party making it (Park, Ch.18). But a representation, i.e. a statement not appearing on the face of the instrument itself, “need only be performed in substance”, and an error

in a representation does not vitiate the policy if made without fraud and not false in a material point, or if the representation be substantially, though not literally, fulfilled (Park, 663, citing *Pawson v Watson*, Cowp. 787; see also *Behn v Burness*, above; *Quin v National Assurance*, Jones & Carey, 316). See also Marine Insurance Act 1906 (c.41) ss.33–41; *Union Insurance v Willis* [1916] A.C. 287.

In a contract for work and materials there is a warranty that the materials used will be of good quality and reasonably fit for that purpose, unless the circumstances of the contract are such as to exclude any such warranty, e.g. unless the person doing the work is given express instructions as to where he is to get the materials (*GH Myers & Co v Brent Cross Service Co* [1934] 1 K.B. 46; cf. *Samuels v Davis* [1943] K.B. 526).

An excise certificate given pursuant to the Spirits Act 1880 (c.24) s.108 was a written warranty for the purposes of s.84(1)(a) of the Food and Drugs Act 1938 (*Follet v Luke* [1947] K.B. 289).

In regard to real property, “a warrantie is a covenant reall annexed to lands or tenements, whereby a man and his heires are bound to warrant the same” (Co. Litt. 365A; Cowel; Jacob).

A warranty is a stipulation subsidiary to or collateral with a principal contract, a breach of which gives rise to a claim for damages but does not affect the principal contract. Having regard to the rule *caveat emptor* and to the obligation of a purchaser to make inquiries for himself, it is difficult to establish a warranty in a contract for the sale of land (*Terrene v Nelson*, 157 L.T. 254; *London County Freehold & Leasehold Properties v Berkeley Property & Investment Co*, 155 L.T. 190).

In a contract by builders or the owners of a building site for the sale of a house to be erected or in course of erection there is an implied warranty that the house will be properly built and fit for habitation (*Lawrence v Cassel* [1930] 2 K.B. 83; *Miller v Cannon Hill Estates Ltd* [1931] 2 K.B. 113).

Misstatements in proposal forms to lead to insurance though innocent are warranties (*Holmes v Scottish Legal Life Assurance Society*, 48 T.L.R. 306).

The term “warranty as to locality” included warranties about the vessel’s location both at commencement and during the period of cover and applied to the trading limits provision (*Australia & New Zealand Banking Group v Compagnie D’Assurances Maritimes Aeriennes Et Terrestres*; *Northern L*, The Lloyd’s List, June 1, 1995).

Stat. Def., Sale of Goods Act 1979 (c.54) s.61.

“Written warranty”: see WRITTEN WARRANTY.

“Upon any representation or assurance”: see UPON.

See FALSE WARRANTY; WRITTEN WARRANTY.

WARREN. “‘Warren’ is a place privileged by prescription or grant of the King for the preservation of hares, conies, partridges, and phesants, or any of them” (Termes de la Ley). See also Seldon Society Publications, Vol.13, cxxiii et seq.

A warren, or free warren, is a franchise to have and keep game within a manor, or other known place (Williams on Rights of Common, 238, which see for Crown grant of a free warren). See also Hall on Profits à Prendre and Rights of Common, Ch.21.

Although Coke says (Co. Litt. 5B) that by a grant of a warren not only the privilege but the land itself passes, yet it has been recently held by the House of Lords that the grant of a “warren”, e.g. “warren of conies”, does not prima facie pass the soil, though it may do so by a context (*Beauchamp v Winn*, L.R. 6 H.L. 223). *Robinson v Dhuleep Singh* (11 Ch. D. 798) is an instance in which, contextually, the word was held (by Fry J.) to pass the soil. See also para.(4).

WASH-HOUSE

“A warren is not parcel, nor any member, of a manor; but it may be appertaining, but that is by prescription” (*Bowlston v Hardy*, Cro. Eliz. 547); therefore, a grant of a manor with all its appertaining franchises and appurtenances (*Morris v Dimes*, 3 L.J.K.B. 170), or even of a manor “and all warrens, etc. thereto appertaining, or accepted and reputed as part” thereof (*Bowlston v Hardy*, above), will not pass a warren in GROSS. In *Morris v Dimes*, Channell arg. said: “A warren is a realty in land, but is not part or parcel of the land (35 Hen. 6, fo. 56). Free warren may be in one, the land in another; and if a party, having both, alien the land, the warren does not pass (8 Hen. 5, 4); and the conveyance of land *cum pertinentibus* will not pass warren”. See also *Pannell v Mill*, 3 C.B. 625, cited ROYALTIES.

A grant by the King of “free warren” and “free chase” does not extend over the King’s own lands unless the grant contain unequivocal words to show that such was the intention; see *Att-Gen v Parsons* cited DEMESNE.

“Beasts of warren”: see BEASTS.

“Fowl of warren”: see FOWL.

Cp. CHASE; PARK; TENEMENT.

WASH-HOUSE. See BATH.

As to Baths and Wash-houses Act 1846 (c.74) ss.25, 26, see *Att-Gen v Fulham Corp*, 90 L.J. Ch. 281.

Stat. Def., Public Health (London) Act 1936 (c.50) s.304.

WASTE. “The best definition of ‘waste’ that I have been able to find is in *Darcy v Askwith* (Hob. 234), which is in these words: ‘It is generally true that the lessee hath no power to change the nature of the thing demised; he cannot turn meadow into arable, nor stub a wood to make it pasture, nor dry up an antient pool or piscary, nor suffer ground to be surrounded, nor decay the pale of park (for then it ceaseth to be a park); nor he may not destroy or drive away the stock or breed of any thing, because it disinherits and takes away the perpetuity of succession, as villains, fish, deer, young spring of woods, the like; but he may better a thing in the same kind, as by digging a meadow to make a drain or sewer to carry away water’. The test, as there laid down, seems to be, whether the act which the lessor says is an act of waste by the lessee is an act which alters the nature of the thing demised” (per Buckley J., *West Ham v East London Water Works Co* [1900] 1 Ch. 624, which see for an example).

Voluntary waste is divisible into (a) meliorating waste, and (b) equitable waste.

Meliorating voluntary waste is that which betters, and which, semble, is not punishable or restrainable unless substantial damage is proved, or some express prohibitive stipulation is broken (*Doherty v Allman*, 3 App. Cas. 709; *Jones v Chappell*, L.R. 20 Eq. 539; *Meux v Cobley* [1892] 2 Ch. 253; *Re McIntosh and Pontypridd Improvements Co*, 61 L.J.Q.B. 164). *Smyth v Carter* (18 Bea. 78) is of but little value hereon (per Lord O’Hagan, *Doherty v Allman*, above).

Equitable voluntary waste “is that which a prudent man would not do in the management of his own property” (per Campbell C., *Turner v Wright*, 2 D.G.F. & J. 243), and is the creation of equity, and arises in cases of destructive or wanton waste which, at law, would have been excused by the words “without impeachment of waste”: “‘Without impeachment of waste (sauns impeachment de wast)’, *absque impetitione vasti* (that is) without any challenge or impeachment of waste, and by force hereof the lessee may cut down the trees and convert them to his own use” (Co. Litt. 220A). But now, the words “without impeachment of waste” will not confer even “any legal right to commit equitable waste” (Judicature Act 1873 (c.66) s.25(3); see

Law of Property Act 1925 (c.20) s.135). So that now, both at law and equity, “the term ‘without impeachment of waste’, contained in a deed or will creating a life estate in land, does not enable the life tenant to deal with the property as if he were the absolute owner thereof in fee simple. He may cut down timber and growing trees fit for timber (*Smythe v Smythe* 2 Swanst. 251; *Gordon v Woodford*, 29 L.J. Ch. 222), and convert them to his own use (*Pyne v Dor*, 1 T.R. 56), and open new mines and work them for his benefit; but he cannot dig and carry off brick-earth, and destroy a field to the prejudice of the inheritance (*London v Web* 1 P. Wms. 528); and he will be restrained from committing wanton and malicious waste, such as damaging and destroying buildings, pulling down ancient boundary walls and fences (*Aston v Aston* 1 Ves. sen. 265; *Vane v Barnard* 2 Vern. 739; *Leeds v Amherst* 16 L.J. Ch. 5), and cutting down thriving wood unfit for timber, and the felling of which would be destructive to the property (*Chamberlayne v Dummer* 1 Bro. C.C. 166; 3 *ibid.* 549); also from cutting down trees which were either planted, or left standing, for the shelter or ornament of a mansion-house (*Newdigate v Newdigate* 2 Cl. & F. 601, cited ORNAMENTAL TIMBER; *Micklethwait v Micklethwait* 26 L.J. Ch. 721, applied in *Weld-Blundell v Wolseley* [1903] 2 Ch. 664; see hereon Settled Land Act 1925 (15 Geo. 5, c.18) s.89); *Wellesley v Wellesley* 6 Sim. 497; *Burges v Lamb* 16 Ves. 174; see *Bubb v Yelverton* L.R. 10 Eq. 465), but he may cut down such ornamental timber as the court would sanction for the preservation of the rest, and would be entitled to the proceeds (*Baker v Sebright* 13 Ch. D. 179). But he is not responsible, although he allows a mansion-house and buildings to go to wrack and ruin for want of timely repairs to the roof and windows (*Powys v Blagrove* 24 L.J. Ch. 142; *Landsowne v Landsowne* 1 Jac. & W. 522, overruling *Parteriche v Powlett* 2 Atk. 383); nor if he pulls down a ruinous structure, and uses up the materials in rebuilding it (*Morris v Morris* 28 L.J. Ch. 329)”; Add. T. (8th edn), 364. See also 2 White & Tudor (9th edn), 920.

“The words ‘without impeachment of waste’, as applied to trustees of a term for special purposes, have, however, a very different sense from the same words annexed to a tenancy for life. The court will not permit trustees so holding, to execute their trust by cutting down timber (*Downshire v Sandys*, 6 Ves. 115)”; Add. T. (8th edn), 364; see also *Campbell v Allgood*, 17 Bea. 623. In *Garth v Cotton* (1 Ves. sen. 524, 546) it was considered that the phrase “without impeachment of waste” was rendered nugatory by adding “except voluntary waste”. However, in *Vincent v Spicer* (25 L.J. Ch. 589), the words were “without impeachment of or for any manner of waste, except spoil or destruction, or voluntary or permissive waste, or suffering buildings to go out of repair” and under those words Romilly M.R. held that a tenant for life might cut all timber (except ornamental timber), which an owner in fee, who regarded his own interest and the permanent advantage of the estate, would probably cut. See WITHOUT IMPEACHMENT OF WASTE.

Permissive waste is damage resulting from the omission to do something which ought to be done, e.g. by non-repair (Co. Litt. 53); but “it is not waste at common law, either wilful or permissive, to leave the land uncultivated” (per Parke B., *Hutton v Warren*, 1 M. & W. 472), or (as the same learned judge said in the same case, as reported Tyr. & G. 653), “Permissive waste or ploughing sward are quite different from desisting to cultivate, which does not amount to waste at common law”; the dictum to the contrary (5 L.J. Ex. 235), semble, is inaccurately reported.

In the absence of an express duty or obligation, no action for permissive waste lies by a remainderman against the estate of a deceased tenant for life (*Re Cartwright, Avis v Newman*, 41 Ch. D. 532; *Re Parry and Hopkin* [1900] 1 Ch. 160). Cp. KEEPING SAME IN REPAIR.

“Waste of the forest”: see *Commissioners of Sewers v Glasse*, L.R. 19 Eq. 134, cited VICINAGE.

When an owner or occupier of premises permitted (after notice) his communication pipe to remain in a condition in which it would cause waste of water, he “wrongfully fails” to do something to prevent that waste within Metropolis Water Act 1871 (c.113) s.32 (*Grand Junction Waterworks Co v Rodocanachi* [1904] 2 K.B. 238). See CONSUMER; WATER CONSUMER.

“Lessee will not commit any wastage or spoil”: see *Rush v Lucas* [1910] 1 Ch. 439, cited PASTURE; distinguished *Clarke-Jervoise v Scutt* [1920] 1 Ch. 382.

(Town and Country Planning General Development Order 1977 (SI 1977/289) art.8.) “Waste” can include waste substances for reprocessing which, once reprocessed, are reusable and cease to be waste (*R. v Rotherham Metropolitan BC, Ex p. Rankin* (1990) 1 P.L.R. 93).

Material which was unwanted in the hands of the original owners was “waste” within the meaning of the Control of Pollution Act 1974 (c.40) s.30(1)(a) (*Friel (HL) & Son v Inverclyde DC* (1994) S.C.L.R. 561).

“Controlled waste” (Control of Pollution Act 1974 (c.40) ss.3, 30). Material removed as waste from one site and deposited for a useful purpose at another remained “waste” for the purposes of this Act, notwithstanding that it had been sorted and graded before re-use (*Kent CC v Queenborough Rolling Mills* [1990] Crim. L.R. 813). Seaweed was held not to be “controlled waste” within the meaning of this section, so that a disposal licence under s.5 of the Act was not required (*Thanet DC v Kent CC* [1993] C.O.D. 308).

The definition of “waste” in Council Directive 85/442 art.1 included substances and objects which were capable of economic reutilisation (*Inter-Environnement Wallonie ASBL v Region Wallonie* [1998] All E.R. (EC) 135).

The expression “waste” in Council Directive 75/442/EEC on waste fell to be construed non-restrictively in accordance with the purposes of the Directive and in the light of all the circumstances. The way in which a thing is treated or used is not necessarily determinative of whether it is waste. So a discarded substance could amount to waste even where recovered as fuel. (*ARCO Chemie Nederland Ltd v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer* [2002] 2 W.L.R. 1241, ECJ).

The scope of the expression “waste” in Council Directive 75/442/EEC turns on the meaning of “discard” in art.1(a), which in turn has to be construed in the light of the aim of the Directive, to protect human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste. The result is to require a non-restrictive construction. The court therefore held that leftover stone resulting from stone quarrying which is stored indefinitely awaiting possible use is to be regarded as discarded waste. (*Palin Grant O.Y. and Vehmassalon Kansanterveysystyon Kuntayhtyman Hallitus v Lounais-Suomen Ymparistokeskus* [2002] 2 C.M.L.R. 560, ECJ).

For the distinction between waste recovery and waste disposal, see *Abfall Service AG (ASA) v Bundesminister fur Umwelt, Jugend und Familie* [2002] 3 W.L.R. 665

ECJ. Something that results from a manufacturing or extraction process whose primary aim is the production of another thing is a by-product-rather than waste-if and only if re-use is a certainty without further processing prior to re-use and as an integral part of the production process. Leftover stone requires long-term storage and its re-use is uncertain and is therefore waste for the purposes of Council Directive 75/442/EEC on waste (*Application by Palin Granit Oy* [2002] 1 W.L.R. 2644, ECJ).

Material which is recycled is not waste for the purposes of liability to landfill tax (*Commissions of Customs and Excise v Parkwood Landfill Ltd* [2003] 1 W.L.R. 697, CA).

"42. Article 1(a) of Directive 75/442 defines waste as any substance or object in the categories set out in Annex I which the holder discards or intends . . . to discard. The annex clarifies and illustrates that definition by providing lists of substances and objects which can be classified as waste. However, the lists are only intended as guidance, and the classification of waste is to be inferred primarily from the holder's actions and the meaning of the term discard . . . 43. The fact that Annex I to Directive 75/442, entitled Categories of Waste, refers in heading Q4 to materials spilled, lost or having undergone other mishap, including any materials, equipment, etc., contaminated as a result of the mishap merely indicates that such materials may fall within the scope of waste. It cannot suffice to classify as waste hydrocarbons which are spilled by accident and which contaminate soil and groundwater. 44. In those circumstances, it is necessary to consider whether that accidental spill of hydrocarbons is an act by which the holder discards them. . . 50. It follows that the holder of hydrocarbons which are accidentally spilled and which contaminate soil and groundwater discards those substances, which must as a result be classified as waste within the meaning of Directive 75/442. 52. The same classification as waste within the meaning of Directive 75/442 applies to soil contaminated as the result of an accidental spill of hydrocarbons. In that case, the hydrocarbons cannot be separated from the land which they have contaminated and cannot be recovered or disposed of unless that land is also subject to the necessary decontamination. That is the only interpretation which ensures compliance with the aims of protecting the natural environment and prohibiting the abandonment of waste pursued by the Directive. . . 53. Since contaminated soil is considered to be waste by the mere fact of its accidental contamination by hydrocarbons, its classification as waste is not dependent on other operations being carried out which are the responsibility of its owner or which the latter decides to undertake. The fact that soil is not excavated therefore has no bearing on its classification as waste." (*Van de Walle v Texaco* (Case C-1/03) [2005] 1 C.M.L.R. 8, ECJ.)

Stat. Def., Environmental Protection Act 1990 (c.43) Sch.2B inserted by Environment Act 1995 (c.25) Sch.22 para.95.

"Waste land of a manor": see WASTE LAND.

Ecclesiastical waste and dilapidations: see Phil. Ecc. Law, Pt 5, Ch.5; DILAPIDATION.

Stat. Def., Control of Pollution Act 1974 (c.40) s.30.

Waste water can be "waste" for the purposes of Directive 75/442 on waste (*R. (Thames Water Utilities Ltd) v Bromley Magistrates' Court* (Case C-252/05) ECJ).

Whether something is waste can be determined from the holder's actions, and the meaning of "discard", which requires a broad construction (*R. (Thames Water) v South East London Division, Bromley Magistrates' Court* (Case C-252/05) [2007] 1 W.L.R. 1945, ECJ).

It can be difficult to apply the "discard" test of Community jurisprudence to determine whether or not something which passes through different states and different owners is waste at any particular point (*R. (OSS Group Ltd) v Environment Agency* [2007] EWCA Civ 611).

For Community purposes the concept of waste is not to be interpreted restrictively and is capable of converting anything discarded by an owner, even if possessing a commercial value and collected for purposes of commercial processing (*Commune de Mesquer v Total France SA* (Case C-188/07) [2008] 3 C.M.L.R. 16, ECJ).

For discussion of the meaning of waste in s.33 of the Environmental Protection Act 1990, see *R. v W., C. and C.* [2010] EWCA Crim 927.

For the meaning of "waste" and related expressions in a non-EU context, see *Landmore Ltd v Shanks Dumfries & Galloway Ltd* [2011] Scot. C.S. CSOH 100.

See ROADSIDE WASTE; COMMON LAND; WASTE GROUND; DO OR MAKE; WILFUL WASTE.

WASTE GROUND. "'Waste ground' is so called because it lies as wast, with little or no profit to the lord of the manor, and to distinguish it from the demesnes in the lords hands" (Cowel). See WASTE; DEMESNE; COMMON LAND.

Grant by the Crown, as lord of the manor of Englefield, of "all those coal mines found, or to be found, within the commons, waste grounds, or marshes within the said lordship of E", with a proviso that the grant should be construed strictly as against the Crown, and most strictly and beneficially for the grantees; held, to pass coal lying under the foreshore of the estuary of the Dee, between high and low water marks, and forming part of the manor (*Att-Gen v Hanmer*, 27 L.J. Ch. 837).

"Waste or uncultivated land", in private ownership, which might be used in the white herring fishery industry under White Herring Fisheries Act 1771 (c.31) s.11, ceased to be "waste or uncultivated" when the owner saw fit to use the land for useful purposes, e.g. for extending a ship-building yard (*Campbeltown Ship-building Co v Robertson*, 35 Sc. L.R. 722).

WASTE LAND. "Waste land of a manor" (Commons Registration Act 1965 (c.64) s.22(1)). Manorial waste is land which is parcel of a manor and uncultivated (*Re Britford Common* [1977] 1 W.L.R. 39; *Re Box Hill Common* [1980] 1 Ch. 109) and for these purposes mowing a race course or a golf course is not cultivation (*R. v Doncaster Metropolitan BC, Ex p. Braim, The Times*, October 11, 1986). The mere fact that land is let to a series of tenants does not of itself prevent the land from being waste land of the manor and therefore a common (*Re TWM Barlwim Common, Risca and Rogerstone* (Ref. No.273/D/106-107)). The decision of the Court of Appeal in *Re Box Hill Common* ([1980] Ch. 109) that the words "waste land of a manor" could not comprehend land which had ceased to be connected with a manor before the date of registration, and that accordingly the land could not be registered as common land, has now been disapproved by the House of Lords in holding that "waste land of a manor" means "waste land now or formerly of a manor" or "waste land of manorial origin". Such land does not cease to be registrable under the Act on account of ceasing to be in the same ownership as the lordship of the manor (*Hampshire CC v Milburn* [1990] 2 W.L.R. 1240). After a proposal to construct works had been abandoned, land over

which the public had a right of access and which remained open, uncultivated and unoccupied was "waste land of a manor" (*Mid-Glamorgan CC v Ogwr BC* [1995] 1 W.L.R. 313).

WASTING ASSET. "Wasting asset" (Capital Gains Tax Act 1979 (c.14) s.37(1)). For the purposes of computing capital gains tax liability on the sale of a residential property, a lease having less than 50 years to run was to be treated as a "wasting asset" even though the tenant had had an option to extend the term under the provisions of the Leasehold Reform Act 1967 (*Lewis v Walters* [1992] S.T.C. 97).

Stat. Def., Taxation of Chargeable Gains Act 1992 (c.12) s.44.

"Wasting asset": Stat. Def., Finance Act 1965 (c.25) Sch.6 paras 9 and 8, para.1; Income and Corporation Taxes Act 1970 (c.10) s.167; Finance Act 1976 (c.40) s.99(7); Capital Gains Tax Act 1979 (c.14) s.37.

WATCH. "Watch or beset": see BESET.

In the phrase "watch and ward", watch "is properly applicable to the night only"; ward "is chiefly applied to the daytime" (1 Bl. Com. 356).

In and by Merchandise Marks Act 1887 (c.28) s.7, "'watch' means all that portion of a watch which is not the watch case".

WATER. "Place for water" includes a well (*Hipkins v Birmingham Gas Co*, 5 H. & N. 74).

Reservation in a lease of "the free running of water and soil coming from any other buildings and lands contiguous to the premises hereby demised, in and through the sewers and watercourses made, or to be made, within through or under the said premises", extends to water and soil coming from contiguous premises, whether arising, in the first instance, on or from such premises, or not but it does not extend beyond water, in its natural condition, and such matters as are the product of the ordinary use of land for habitation, and therefore does not give a right of passage for the refuse of tan-pits (*Chadwick v Marsden*, L.R. 2 Ex. 285).

A right to take "water" in a private Act meant naturally accruing water and not sewage effluent (*John S Deed & Sons v British Electricity Authority and Croydon Corp*, 66 T.L.R. (Pt 2) 567).

"Open water": see OPEN; FIRST OPEN WATER.

See RIVER; SUFFICIENT WATER; SUPPLY; WATERCOURSE; WATERS; WELL SUPPLIED; AERATED; CHATTELS; DOMESTIC; FIRST WATER; WASTE; WATER POWER.

WATER COMPANY. A municipal corporation owning waterworks and supplying water and charging for same, was a "water company" within Public Health Act 1875, s.52 (*Wolverhampton v Bilston* [1891] 1 Ch. 315).

A company for supplying motive power by hydraulic pressure was not a water company (*London CC v London Hydraulic Power Co*, 14 T.L.R. 301).

As to what would or would not be carrying on the business of a water company, so as to be ultra vires a railway company, see *Att-Gen v North Eastern Railway* [1906] 1 Ch. 310, affirmed [1906] 2 Ch. 675. As to when additional land may be used for collecting water and erecting waterworks, see *Att-Gen v Frimley and Farnborough Water Co* [1908] 1 Ch. 727, distinguished in *Att-Gen v Barnet Water Co*, 54 S.J. 547.

WATER POWER. A workman repairing a hydraulic lift, and using the lift itself for the purpose of the repair, was engaged on a work for the repair of which machinery driven by "water power" was used within the definition of "engineering work" in Workmen's Compensation Act 1897 (c.37) s.7(2) (*Tullock v Waygood* [1906] 2 K.B. 261).

WATER RATE. In Waterworks Clauses Act 1847 (c.17) s.3, “water rate” included “any rent, reward, or payment, to be made to the undertakers for a supply of water”. See *Northampton v Ellen* [1904] 1 K.B. 299, cited NOT EXCEEDING.

A lessor’s covenant “to pay all rates, taxes, assessments, water rate, and other outgoings (except the gas and electric light), now or hereafter to be IMPOSED OR ASSESSED upon the said premises, or on the lessor or lessee in respect thereof”, includes, as “water rate”, the ordinary rate, and not a special water rate for trade purposes, e.g. a supply of water for a restaurant (*Floyd v Lyons* [1897] 1 Ch. 633). Cp. *Haslett v Sharman* [1901] 2 Ir. R. 433, 439, cited TAXES; RATE. See *South Surburban Gas Co v Metropolitan Water Board* [1909] 2 Ch. 666. See DOMESTIC.

WATER SUPPLY. The analogy of the decision of the House of Lords in *Gas Light & Coke Co v South Metropolitan Gas Co*, 62 L.T. 126, on the expression “supply of gas” in the Metropolis Gas Act 1860 (c.125), was applied to the expression “supply of water” in the special Acts of the water company in *Att-Gen v West Gloucestershire Water Co* [1909] 2 Ch. 338.

See SOURCE; SUPPLY.

WATERCOURSE. “Without saying that a ‘watercourse’ may never mean the channel in which water flows, it certainly may mean the stream or flow of the water itself; and whether it means the one or the other in any instrument, will very materially depend on the context” (per Coleridge J., delivering the judgment, *Doe d. Egremont v Williams*, 11 Q.B. 700).

“‘Watercourse’ may mean, and perhaps the more natural meaning of it is, a channel in which water flows; and the grant of a right to make a watercourse may include the right to fill it with water, and use the water flowing in it when made” (per Lord Davey, delivering the judgment, *Remfry v Natal* [1896] A.C. 558).

See also *Taylor v St. Helen’s*, 6 Ch. D. 264; and as to the acquisition of a right to a watercourse, see *Wood v Waud*, 3 Ex. 748; *Rameshur Pershad Narain Singh v Koonj Behari Pattuk*, 4 App. Cas. 121.

“A watercourse means water flowing between banks more or less defined. To constitute a watercourse in which rights may exist or may be acquired by user or otherwise, the flow of water must possess that unity of character by which the flow on one person’s land can be identified with that on his neighbour’s land. Water which squanders itself over an indefinite surface is not a watercourse, nor a proper subject-matter for the acquisition of a right by user (*Briscoe v Drought*, 11 Ir. Com. Law Rep. 250; *Rawstron v Taylor*, 11 Ex. 369; *Broadbent v Ramsbottom*, 11 Ex. 602 at 615). But the moment the water of a spring runs into a definite channel, it constitutes a watercourse (*Dudden v Clutton Union*, 26 L.J. Ex. 146). All accessions to such stream, from whatever source, form part of it (*Wood v Waud*, above). Where the question at the trial is whether there is a watercourse or not, the judge ought, before he leaves that question to the jury, instruct them as to what constitutes a ‘watercourse’ in law” (*Briscoe v Drought*, above; see also *Elliott v South Devon Railway*, 2 Ex. 725; *R. v Cottle*, 16 Q.B. 412; *Cashill v Wright*, 6 E. & B. 891).

A claim by an owner of a copper mine to sink pits on his own land, to fill such pits with iron, and to cover the same with water pumped from the mine (in order to precipitate the copper in the water), and afterwards to let off the water into a watercourse in another’s land, is a claim to a “watercourse” within Prescription Act 1832 (c.71) s.2 (*Wright v Williams*, 5 L.J. Ex. 107; *Carlyon v Lovering*, 1 H. & N. 797).

Semble, a tidal river may be included in "watercourse" (*Somersetshire Drainage Commissioners v Bridgwater*, 81 L.T. 729).

"Drains, trenches, or watercourses" (Aire and Calder Navigation Act 1774 (c.96) s.97) applied only to artificial streams made for improving the navigation of the rivers mentioned in the Act, and not to natural streams (*Smith v Barnham*, 1 Ex. D. 419).

"Watercourses" (Settled Land Act 1925 (c.18) Sch.III(xiv)); see *Re Harrington*, 75 L.J. Ch. 460, cited RESERVOIR.

As to riparian rights in a watercourse, see *Baily v Clark* [1902] 1 Ch. 649; RIPARIAN.

An estuary was not a watercourse within the meaning of s.259(1)(a) of the Public Health Act 1936 (c.49) (*R. v Falmouth and Truro Port Health Authority, Ex p. South West Water Ltd* [2000] 3 W.L.R. 1464, CA).

A lake was not a watercourse because the water did not flow from it to others between banks (*Humberside Aggregates and Excavations Ltd v Customs and Excise Commissioners VAT and Duties Tribunal* [2004] V.& D.R. 388).

"Natural stream or watercourse": see *Phillimore v Watford Rural DC* [1913] 2 Ch. 434, cited STREAM.

Stat. Def., Water Industry Act 1991 (c.56) s.219; Water Resources Act 1991 (c.57) s.221; Land Drainage Act 1991 (c.59) s.72.

See DRAIN; SPRING; STREAM; WATERS.

WATERS. "If a man grant *aquam suam*, the soile shall not passe, but the pischarry within the water *passestherewith*" (Co. Litt. 4B). Cp. POOL.

As to the effect of general words in a conveyance granting "waters, watercourses": see *Wardle v Brocklehurst*, 29 L.J.Q.B. 145; *Sanderson v Berwick-upon-Tweed*, 13 Q.B.D. 547.

"Waters", in Medicines Stamp Act 1812 (c.150), Sch., as affected by the repeal in Stamps Act 1833 (c.97) s.20; see *Att-Gen v Lamplough*, 3 Ex. D. 214.

"All other waters wherein salmons be taken", 2 Westm., c. 47; the Thames is not included herein (2 Inst. 478).

A reservoir, situate in a salmon fishery district and stocked with trout for the purpose of being fished, is not "waters... frequented by trout or char", within Freshwater Fisheries Act 1878 (c.39) s.6; such "waters" must be tributaries of a river, or must communicate with it by something more than a valve (*Stead v Nicholas* [1901] 2 K.B. 163). See TRIBUTARY. See BRITISH WATERS; INLAND WATERS.

Subterranean waters: see DEFINED CHANNEL; *Acton v Blundell*, 13 L.J. Ex. 289, 302, and *Chasemore v Richards*, 7 H.L. Cas. 349, cited INJURY. See also *Bradford v Ferrand* [1902] 2 Ch. 655, cited DEFINED CHANNEL; cp. RIVER; STREAM; WATERCOURSE.

"Inland waters": see INLAND WATERS.

Stat. Def., Land Drainage Act 1930 (c.44) s.41(6); Diseases of Fish Act 1937 (c.33) s.10, as amended by Diseases of Fish Act 1983 (c.30) s.4(3); Land Drainage Act 1976 (c.70) s.27(4).

See NAVIGABLE; TERRITORIAL WATERS; TIDAL WATER; WATER.

WATERSIDE MANUFACTURER. Where two separate companies, which were both wholly-owned subsidiaries of a third, respectively owned and operated a wharf and manufacturing premises, but the manufacturing company's premises did not abut the waterside, it was not legitimate to pierce the corporate veil and treat them as a single entity so as to qualify as a "waterside manufacturer", and thus be exempt from

WATERWAY

the requirement to employ registered dock workers to carry out what would otherwise be port transport work (*National Dock Labour Board v Pinn & Wheeler*, *The Times*, April 5, 1989). See also DOCK.

WATERWAY. Stat. Def., National Parks and Access to the Countryside Act 1949 (c.97) s.114(1).

WATERWORKS. In Public Health Act 1875 (c.55) ss.4, 52, “waterworks” meant works for the supply of water to persons who required it; and did not include works for obtaining water for the use only of a local authority, e.g. for flushing sewers (*West Surrey Water Co v Chertsey* [1894] 3 Ch. 513); see also SUPPLY. In s.52, “waterworks” meant new waterworks; the section did not apply to additions, or improvements in, existing works (*Cleveland Waterworks Co v Redcar* [1895] 1 Ch. 168), unless the extension was into a new district (*Huddersfield v Ravensthorpe* [1897] 2 Ch. 121).

Value of land to be compulsorily acquired for waterworks, e.g. a reservoir: see *Re Lucas and Chesterfield Water Board* [1909] 1 K.B. 16.

Stat. Def., Waterworks Clauses Act 1847 (c.17) s.3; London Building Act 1930 (c. clviii) s.4.

See SUPPLY.

WAVESON. “Such goods as, after shipwreck, do appear swimming upon the water” (Jacob). See FLOTSAM.

WAY. “There be three kinde of wayes, whereof you shall reade in our ancient bookes. First a foot way which is called *iter*, *quod est jus eundi vel ambulandi hominis*; and this was the first way.

“The second is a foot way and horse way, which is called *actus ab agendo*; and this vulgarly is called packe and prime way, because it is both a foot way, which was the first or prime way, and a packe or drift way also.

“The third is *via* or *aditus*, which contains the other two, and also a cart way, etc. for this is *jus eundi, vehendi, et vehiculum et jumentum ducendi*; and this is twofold, namely *regia via*, the king’s highway for all men, *et communis strata*, belonging to a city or towne, or betweene neighbours and neighbours. This is called in our bookes *chimin*, being a French word for a way, whereof cometh *chiminage*, *chiminagium*, or *chimmagium*, which signifieth a toll due by custome for having a way through a forest; and in ancient records it is some time also called *pedagium*” (Co. Litt. 56A). See also *Termes de la Ley*, *Chimin*; 3 Cru. Dig. Title 24.

Besides the ways enumerated by Coke there may be a driftway or way for driving cattle, which is not necessarily included in a carriage or horse way (*Ballard v Dyson*, 1 Taunt. 279; See thereon per Pearson J., *Serff v Acton*, 31 Ch. D. 683).

When in a deed relating to mines there is a grant of “a free and convenient way” (*Senhouse v Christian*, 1 T.R. 560), or of a “sufficient wayleave” (*Dand v Kingscote*, 9 L.J. Ex. 279; 6 M. & W. 174), or, probably, of a “necessary wayleave”, or the like (same case), or to “convey coals” (*Bishop v North*, 12 L.J. Ex. 362), the grantee, *prima facie*, may for his better accommodation make waggon-roads or tram-roads on the site over which such a right of way extends. He may even make a railroad if, in the deed, there be a clause requiring him to compensate for damage, and if such a road would not be a nuisance or a source of danger (*Bishop v North*, above).

Under the words “sufficient way-leave”, a party is not confined to such description of way as was in use at the time of the grant (*Dand v Kingscote*, above).

“A way over any land” (Highways Act 1980 (c.66) s.31(1)). A nontidal river over which there has been a public right of navigation cannot be a “way over any land” for

the purposes of this section (which provides for the presumption of dedication as a highway of any way which has been actually enjoyed by the public for 20 years or more), it being held that what was dedicated could not be anything but the land itself (*Att-Gen Ex p. Yorkshire Derwent Trust v Brotherton* [1991] 3 W.L.R. 1126).

(Road Traffic Act 1988 (c.52) s.192.) A road restricted to the public by means of a byelaw and a notice but not physically blocked to members of the public is a “way to which the public has access” within the meaning of s.192 (*Renwick v Scott* (1996) S.L.T. 1164).

See also RIGHT OF WAY.

“Permanent way”: see PERMANENT.

Stat. Def., London Building Act 1930 (c. clviii) s.4.

See ABANDONMENT; BY WAY OF; GATEWAY; NON-USER; USUAL WAY; UNDER WAY; WAYS; BRIDLE-PATH; CAUSEWAY; FOOTPATH; HIGHWAY; PUBLIC HIGHWAY; PUBLIC WAY; ROADWAY; RIGHT OF WAY.

WAYFARER. As regards his right to accommodation at an inn, and the innkeeper’s rights against him, “wayfarer” seems synonymous with “traveller”: see hereon judgment of Wills J., *Orchard v Bush* [1898] 2 Q.B. 284, cited GUEST.

WAY-GOING. See AWAY-GOING.

WAYLEAVE. See WAY; *Whitwham v Westminster Brymbo Co* [1896] 2 Ch. 538; *North Eastern Railway v Hastings* [1900] A.C. 260. See Finance Act 1910 (c.35) s.24. Stat. Def., Finance Act 2005 (c.5) s.22.

WAYS. “The words ‘with all ways thereunto appertaining’, strictly and properly speaking, never carry a right of way over another tenement of the grantor; and for this simple reason—when a man who is owner of two fields walks over one to get to the other, that walking is attributable to the ownership of the land over which he is walking, and not necessarily to the ownership of the land to which he is walking” (per Fry J., *Bolton v Bolton*, 11 Ch. D. 970, citing *Harding v Wilson*, 2 B. & C. 96; *Barlow v Rhodes*, 2 L.J. Ex. 91). And, accordingly, where there was a contract to sell premises “with the appurtenances”, the vendor was entitled to have in the conveyance a limitation of the general words of Conveyancing Act 1881 (c.41) s.6 (see Law of Property Act 1925 (c.20) s.62), so as to grant no more than he had bargained to sell (*Bolton v Bolton*, above; *Re Peck and London School Board* [1893] 2 Ch. 315); and, generally, he would be entitled to have excluded therefrom the words “reputed” and “enjoyed” (*Re Peck and London School Board*). See also *Re Hughes and Ashley* [1900] 2 Ch. 595.

But a grant, by the owner of two closes of land, of one of them, “together with all ways now used therewith”, will pass to the grantee a right of way over a clearly defined path, constructed over the other close, and then actually used as the mode of access to the close granted, even though the path did not exist prior to the unity of possession (*Barkshire v Grubb*, 18 Ch. D. 616; see also *Thomson v Waterlow*, L.R. 6 Eq. 36; *Langley v Hammond*, L.R. 3 Ex. 161; *Kay v Oxley*, L.R. 10 Q.B. 360; *Bayley v Great Western Railway*, 26 Ch. D. 434; *Brown v Alabaster*, 37 Ch. D. 490). See THEREWITH; RIGHT; RIGHT OF WAY.

Ways “now or heretofore held or enjoyed”: see *Roe v Siddons*, 22 Q.B.D. 224.

Ways “occupied or enjoyed with” (Law of Property Act 1925 (c.20) s.62): see RIGHT; *Clark v Barnes* [1929] 2 Ch. 368.

In Employers’ Liability Act 1880 (c.42) s.1(1), “ways” meant “all kinds of material things which may be used in, or in connection with, the business of the employer” (per

Field J., *McGiffen v Palmer's Shipbuilding Co*, 10 Q.B.D. 5). Planks placed for walking over a hole in ground where machinery was being erected was such a "way" (*Bromley v Cavendish Spinning Co*, 2 T.L.R. 881). But it was not necessary that there should be a defined passage; any vacant space on the premises where the employer's business was being done which was ordinarily traversed by workmen when engaged on that business, was such a "way" (*Willets v Watt* [1892] 2 Q.B.D. 92). See also *Wood v Dorrall*, 2 T.L.R. 550; *McShane v Baxter*, 7 T.L.R. 58; *Conway v Clemence*, 2 T.L.R. 80, cited PLANT; WORKS. See also DEFECT.

A collection of inflammable gas in a mine was a defect in the "ways and works" of the employer within Employers' Liability Act 1880 (c.42) s.1: see *Nimmo v Connell* [1924] A.C. 595.

"Ways" in a mining lease: see *Beaufort v Bates*, 31 L.J. Ch. 481.

"Ways" in a Turnpike Act includes railways (*Rowe v Shilson*, 4 B. & Ad. 726).

WE. A promissory note given as consideration for the purchase of shares of a corporation and containing the words "we promise to pay" creates a joint obligation under English common law on the part of all persons signing the note, but under Quebec law the obligation is joint and several pursuant to the provisions of art.1105 of the Civil Code, inasmuch as the note is being given in connection with a commercial transaction (*Kaufman v Weissfeld* [1972] Que. C.A. 462).

WEAKNESS. Accident caused by weakness: see CAUSED BY.

WEAPON. (Firearms Act 1968 (c.27) s.5(1)(b).) An electric stunning device is a "weapon" within the meaning of this section (*Flack v Baldry* [1988] 1 W.L.R. 393). A CS gas canister is a "weapon" within the meaning of this section. The argument that the gas was the weapon and the canister merely its container failed. It was the combination of canister and contents that comprised the "weapon" (*R. v Bradish* (1990) 154 J.P. 21). A gun did not cease to be a "weapon" within the meaning of this section just because, due to some unknown fault, it was not working (*Brown v DPP*, *The Times*, March 27, 1992).

"Air Weapon". Stat. Def., Air Weapons and Licensing (Scotland) Act 2015 s.1.

"Chemical weapons": see CHEMICAL WEAPONS.

"Offensive weapon": see OFFENSIVE.

"Weapon of offence": Stat. Def., Theft Act 1968 (c.60) s.10.

See BIOLOGICAL WEAPON; OFFENSIVE WEAPON.

See DISCHARGE; NOXIOUS.

WEAR. See WEIR.

WEAR AND TEAR. "These words ('reasonable wear and tear') no doubt, include destruction to some extent—destruction of surfaces by ordinary friction—but we do not think they include total destruction by a catastrophe which was never contemplated by either party"; even though such catastrophe may have resulted from the reasonable use of the premises demised (per Lindley J., delivering the judgment, *Manchester Bonding Warehouse Co v Carr*, 5 C.P.D. 507).

"If those words, 'fair wear and tear and damage by tempest excepted' were not there, any dilapidations found at any time, or at the end of the term, by reason of the wear and tear—e.g. the wearing out of the walls and floors of a public-house from the constant traffic and so forth—the lessee would be liable to replace, and if, unfortunately, by a storm his chimney-pot was blown down, or he had his roof broken,

he would be bound to put it straight, and restore the place to good and substantial repair" (per Kekewich J., *Davies v Davies*, 38 Ch. D. 499). See WITHOUT IMPEACHMENT OF WASTE.

In the phrase "reasonable (or fair) wear and tear excepted" neither of the adjectives "reasonable" or "fair" can apply to the elements as a cause of wear and tear. Nor can either word be used as applying to the effects of the elements. The phrase cannot mean a fair amount of resultant wear and tear. The words "reasonable" and "fair" in the phrase only apply to the treatment of the premises by the covenantor (*Taylor v Webb* [1937] 2 K.B. 283).

Under a covenant by a lessee to deliver up the premises in good and tenantable repair on the expiration of the term, "reasonable wear and tear excepted", it was held that the tenant was not liable for damage due to the bursting of an outside water pipe which he was under no liability to repair: see *Citron v Cohen*, 36 T.L.R. 560; see also *Haskell v Marlow*, 97 L.J.K.B. 311.

In a covenant to repair by a tenant "fair wear and tear excepted" covers no more than the remedying of things which wear out in the course of reasonable use: it does not cover other damage which might flow from the wear and tear (*Regis Property Co v Dudley* [1959] A.C. 370).

The deduction for purpose of income tax under Sch.D, for "wear and tear" (Customs and Inland Revenue Act 1878 (c.15) s.12), might have been and, semble, should have been, not an average annual wear and tear of the three years on which the profits were estimated but the wear and tear during the year immediately preceding the year of assessment (*Cunard SS Co v Coulson* [1899] 1 Q.B. 865). See also *Inland Revenue Commissioners v Great Wigston Gas Co*, 62 T.L.R. 623.

"Wear and tear" (Income Tax Act 1952 (c.10) s.298(1), now Capital Allowances Act 1968 (c.3) s.42(1)) means "depreciation" (*Macsga Investment Co v Lupton* [1967] Ch. 1016).

The case of *Bigge v Bigge* (9 Jur. 192) illustrates the distinction between "wear" and "tear". In that case a testator had, by handling, worn his will in two—a very different thing from his having torn it in two—so there was no revocation by "tearing" within Wills Act 1837 (c.26) s.20. See TEAR.

"Diminished value by reason of wear and tear": see DIMINISH; see also REPAIR; REASONABLE.

WEARING APPAREL. Bequest of "all my goods and wearing apparel of what nature and kind soever, except my gold watch"; held, that not only the testatrix's clothes but also her personal ornaments passed (*Crichton v Symes*, 3 Atk. 61).

WEATHER WORKING DAY. "Weather working day" means a day when work is not prevented by the weather; in a charterparty means a day on which the weather does not prevent loading or unloading (*Dampskibsselskabet Botnia A/S v Bell & Co* [1932] 2 K.B. 569); to load so much "per weather working day", in a charterparty means that the charterer is to be charged half a day when substantially half a day's work can be done, and a whole day when substantially a full day's work (though not amounting to 12 hours) can be done; less than half a day is not to be considered (per Russell C.J., *Branckelov SS Co v Lamport* [1897] 1 Q.B. 570). See further *Bennett v Brown* [1908] 1 K.B. 490; *British & Mexican Shipping Co v Lockett* [1911] 1 K.B. 264, cited WORKING DAYS.

What one has to look at in determining the meaning of the expression "weather-working day" in a charterparty is the working hours and not the non-working

hours. It means that the working day must be reduced by the time during which working is suspended by reason of the weather (*Alvion Steamship Corp Panama v Galban Lobo Trading Co* [1955] 1 Q.B. 430).

The status of a day as being a weather working day, wholly or in part or not at all, is determined solely by its own weather, and not by extraneous factors, such as the actions, intentions and plans of any person (*Compania Naviera Azuero v British Oil and Cake Mills* [1957] 2 Q.B. 293).

A mere threat of bad weather which affects the safety of a vessel in the particular place in which she is lying, but not the actual work of unloading, will not prevent a day from being a "weather working day" (*Compania Crystal de Vapores v Herman & Mohalta* [1958] 2 Q.B. 196).

A "weather working day" is a working day which is not unavoidable because of bad weather, though local custom at a port might require a different meaning (*Reardon Smith Line v Ministry of Agriculture, Fisheries and Food; Carlton Steamship Co v Same; Cape of Good Hope Motor Ship Co v Same* [1963] A.C. 691).

See WORKING DAYS.

WEEK. Though a "week" usually means any consecutive seven days, it will sometimes be interpreted to mean the ordinary notion of a week reckoning from Sunday to Sunday (*Bazalgette v Lowe*, 24 L.J. Ch. 368, 416). See also *Cadzow Coal Co v Gaffney*, 38 Sc. L.R. 40, cited WEEKLY.

And, probably, a "week" usually means seven clear days—thus, where a statute provided that notice of appeal should be given "within one week" before such appeal was to be heard, and notice was given on the 22nd for the 29th, it was held that the notice was insufficient (*R. v Sweeney*, 2 Ir. L.R. 278). Cp. FORTNIGHT. See further *Weston v Fidler*, 88 L.T. 769, distinguished *Newman v Slade* [1926] 2 K.B. 328.

A theatrical engagement to employ at so much "per week" may be shown, by usage, to mean "per week during every week that the theatre is open" (*Grant v Maddox*, 16 L.J. Ex. 227). See further as to construction of such an engagement, *Mapleson v Sears*, 56 S.J. 54.

"A week's pay" (Employment Protection (Consolidation) Act 1978 (c.44) Sch.14 para.5(1), (2)). An employee's average rate of remuneration should be calculated by reference to all hours worked, including overtime, and all remuneration received including overtime pay stripped of any bonus element (*British Coal Corp v Cheesebrough and Secretary of State for Employment* [1988] I.R.L.R. 351).

"Period of four weeks" (Employment Protection (Consolidation) Act 1978 (c.44) s.84(4)). "Weeks" here means calendar weeks, not working weeks (*Benton v Sanderson Kayser* [1989] I.R.L.R. 19).

"Within six weeks" (Acquisition of Land Act 1981 (c.67) s.23). A six-week period beginning on a Tuesday ends six Tuesdays later and an act done on the sixth Tuesday is done within six weeks. A period measured in weeks ends at midnight on the corresponding day of the week to that on which the period commenced. The word "within" means the final moment of a period in time. Where a time limit could not be extended it was important not to construe the limit narrowly (*Omoregei v Secretary of State for the Environment* [1997] 4 C.L. 541).

Stat. Def., "means any period of 7 days" (Social Security (Incapacity for Work) Act 1994 (c.18) s.3(1); new inserted s.30C(7) of Social Security Contributions and Benefits Act 1992 (c.4)).

Stat. Def., Employment Protection (Consolidation) Act 1978 (c.44) s.153; Betting and Gaming Duties Act 1981 (c.63) s.20; Social Security and Housing Benefits Act 1982 (c.24) s.26.

WEEK-DAY. “Week-days other than Saturdays”, within s.1 of the Shops (Early Closing) Amendment Act 1921 (c.60); see *London CC v Gainsborough* [1923] 2 K.B. 301. Cp. now Shops Act 1950 (c.28) s.6.

Stat. Def., Licensing Act 1961 (c.61) s.8(6); Representation of the People Act 1983 (c.2) Sch.1 para.2(3).

See HOLIDAY.

WEEKLY. As used in a building contract, parol evidence is admissible to show that, by the usage of the building trade, “weekly accounts” of extras means accounts of the day-work only, and does not extend to work capable of being measured (*Myers v Sarl*, 30 L.J.Q.B. 9).

“In the Workmen’s Compensation Acts the words ‘weekly earnings’ show that the legislature intended that the court should ascertain what, under the circumstances of employment actually prevailing during the period for which the average is taken, would be the remuneration earned by the workman in a normal week” (per Fletcher Moulton L.J., in *Perry v Wright* [1907] 1 K.B. 456). See also *Penn v Spiers & Pond* [1908] 1 K.B. 766, cited EARNINGS; *Twidale v London & North Eastern Railway* [1925] 2 K.B. 455.

“Weekly payment”, in Sch.I para.17 of the Workmen’s Compensation Act 1906 (c.58), included every weekly payment which might be received under para.16: see *Carlton Main Colliery Co v Clawley* [1917] 2 K.B. 691. See further *Tarr v Cory Bros & Co* [1917] 2 K.B. 774; *Wilson v Baird* [1923] S.C. 164; *Wolseley Motors v Sharp*, 18 B.W.C.C. 15.

“Weekly payments”, in s.14 of the Workmen’s Compensation Act 1923 (c.42), were not confined to weekly payments assessed under an award or recorded agreement, but included weekly payments made voluntarily or under an unrecorded agreement: see *Pudney v France, Fenwick & Co Ltd* [1925] 1 K.B. 346.

An order in execution of a statutory power enabling the order of “weekly payments” may direct that the first payment be made before the expiration of a week from the making of the order (*R. v Weston*, Raym. Lord, 1197).

A weekly tenancy does not come to an end at the end of each week; it needs some notice to determine it (*Bowen v Anderson* [1894] 1 Q.B. 164). See hereon REASONABLE.

“Greater weekly sum”: see GREATER.

“Weekly close season”: see ANNUAL CLOSE SEASON.

WEEK’S PAY. A “week’s pay” for the purposes of reg.16(1) of the Working Time Regulations 1998 is the amount payable by the employer under the contract of employment for the normal working hours in a week. An employer cannot unilaterally decide that the week’s pay includes not only payment for the hours worked during the week but also an element of holiday pay. (*Blackburn v Gridquest Ltd (trading as Select Employment)* [2002] L.R.L.R. 604, CA).

See also WAGES.

WEIGH. “To weight” means to affect to ascertain weight by means of balancing—using what may be properly called a balance—although the instrument be fraudulently used. Still, one might weigh a thing and sell it, and yet not sell it by its

WEIGHING

weight. There would be a weighing, and then a selling otherwise than by weight” (per Darling J., *Cox v Bleines* [1902] 1 K.B. 670, cited BY WEIGHT).

WEIGHING. A “correct weighing instrument”, as used in a bye-law made under s.28 of the Weights and Measures Act 1889 (c.21) meant one which would, “at one weighing”, correctly weigh any sack of coal in the retail dealer’s vehicle (*Crick v Nicholls* [1905] 1 K.B. 501).

Weighing machine “false or unjust”: see UNJUST; USING; WILFULLY.

“Weighing or measuring equipment”: Stat. Def., Weights and Measures Act 1985 (c.72) s.94.

See WEIGHT; cp. MEASURING.

WEIGHT. Neither scales nor weighing machines are weights or measures (*Thomas v Stephenson*, 22 L.J.Q.B. 258). See WEIGHING; cp. MEASURE.

Goods shipped from abroad to England to be paid for according to “weight”, connotes the net English weight (*Geraldes v Donison*, Holt N.P. 346).

“Weight of the mineral gotten” (Coal Mines Regulation Act 1872 (c.76) s.17); see *Brace v Abercarn Co* [1891] 2 Q.B. 699, cited MINERAL GOTTEN.

“Weight of vehicle and coal” (Weights and Measures Act 1889 (c.21) s.22(1)); see *Beardsley v Pike*, 90 L.T. 652, cited PREVIOUSLY.

“Timber at measurement weight”: see *Great Western Railway v Caswell* [1904] 2 K.B. 508.

“Weight unladen”: see Roads Act 1920 (c.72) s.8.

“Excessive weight”: see EXTRAORDINARY TRAFFIC.

“Net weight delivered”: see DELIVERED.

“127. I turn to consider the irrationality argument. I would make the preliminary observation that expressions such as ‘substantial weight’, or for that matter ‘limited weight’, do not have some uniform meaning, or even carry some numerical evaluation. Their significance depends upon the particular context in which they have been used. They often represent no more than a summary expressing how the decision-maker has pulled together a number of judgmental factors. It is difficult to see how in the present type of case a rationality challenge could succeed merely on the basis that a decision-maker has decided to give ‘substantial weight’ to a policy. Instead, the challenge ought to be directed to the process of reasoning which has been adopted.” (*Luton Borough Council, R. (on the application of) v Central Bedfordshire Council* [2014] EWHC 4325 (Admin).)

“Weights and Measures Act 1878 to 1893”: see Sch.2 of the Short Titles Act 1896 (c.14).

See ACTUAL WEIGHT; BY WEIGHT; COIN; CORRECT; DEAD WEIGHT; ENGLISH; STANDARD. Cp. MEASURE.

WEIGHT UNKNOWN. Where a master of a ship signs for goods “weights unknown”, the instrument is open to explanation (*Geraldes v Donison*, Holt N.P. 347). See CLEAN BILL OF LADING; CONTENTS UNKNOWN.

“Not responsible for weight” (*Bradley v Dunipace*, 31 L.J. Ex. 210; 32 L.J. Ex. 22, on which case see *Parsons v New Zealand Co* [1900] 1 Q.B. 714, cited CONCLUSIVE EVIDENCE), or “weight unknown” (*The Emilien Marie*, 44 L.J.P.D. & A. 9), gives the shipowner, not an absolute, but a qualified exoneration as regards the weight.

“Weight, measurement, contents and value unknown” (in bill of lading): see *New Chinese Antimony Co Ltd v Ocean SS Co Ltd* [1917] 2 K.B. 664.

“Weight, quality, condition and measure unknown”, in bill of lading: see *The Tromp* [1921] P. 337.

“Weight, measure, quality, contents and value unknown” (in a charterparty): see *Hogarth Shipping Co v Blyth, Greene, Jourdain & Co* [1917] 2 K.B. 664.

WEIR. “Weare”, or ‘were’, a stank or great dam in a river, accommodated for the taking of fish, or to convey the stream to a mill” (Cowel). See further *Williams v Wilcox*, 7 L.J.Q.B. 229; *Hanbury v Jenkins* [1901] 2 Ch. 401.

An unlegalised erection of a weir may be restrained (*Barker v Faulkner* [1898] W.N. 69).

See GURGES; KIDEL; cp. WERE.

WELCHER. “Welcher”, without special damage, is not slander (*Blackman v Bryant*, 27 L.T. 491), unless the jury are satisfied that the word is used in the sense of “one who takes money from those who make bets with him intending to keep such money for himself and never to part with it again” (*Williams v Magyer*, *The Times*, March 1, 1883).

WELFARE. “Welfare of a minor” (Supreme Court Act 1981 (c.54) s.18(1)(h)(i)). Parental access is not part of “welfare” for the purposes of this section (*Re H. (Minors)* (1989) 19 Fam. Law 349).

“Welfare” (Adoption Act 1958 (c.5) s.7(1)) means “benefit” (*Re A. (An Infant)* [1963] 1 W.L.R. 231).

A gift for “work for the welfare of cats and kittens needing care and attention” is a valid charitable gift (*Re Moss* [1949] 1 All E.R. 495).

Stat. Def., Matrimonial Causes Act 1973 (c.18) s.43(6).

See EDUCATION.

WELFARE OF CHILD. “In order to judge whether the decision maker complied with the duty to have regard to the need to safeguard and promote the welfare of the Claimant it is necessary first to investigate the meaning to be attributed to the words ‘safeguard and promote the welfare of children.’ The phrase is a familiar one in legislation relating to children. It appears in section 17 of the Children Act 1989 and section 11 of the Children Act 2004. Neither of these Acts provides a definition of the words ‘safeguard and promote’ in the context of the welfare of children. However, following the enactment of the Children Act 2004 guidance was issued upon the meaning to be attributed to the phrase. The substance of the guidance issued in 2004 as to the meaning to be given to the phrase ‘safeguard and promote’ is referred to expressly in guidance issued in November 2009 by the Home Office and the Department of Children, Schools and Families in a document entitled ‘Every Child Matters: Change for Children’ (hereinafter referred to as the ‘2009 guidance’). This guidance was issued under section 55(3) and 55(5) of the 2009 Act. It specifies that safeguarding and promoting the welfare of children shall mean:-

- protecting children from maltreatment;
- preventing impairment of children’s health or development (where health means ‘physical or mental health’ and development means ‘physical, intellectual, emotional, social or behavioural development’);
- ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and
- undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully.

It seems to me to be clear that the phrase ‘the need to safeguard and promote the welfare of children within the United Kingdom’ should be interpreted to encompass the concepts encapsulated in each of the bullet points set out above. . . . I should add, too, that promoting the welfares of a child is a different concept from safeguarding his welfare. The last two of the bullet points, in particular, seem to me to be addressing the concept of promoting a child’s welfare.” (*R. (on the application of TS) v Secretary of State for the Home Department* [2010] EWHC 2614 (Admin).)

WELFARE OF THE CHILD. For the meaning of the term in s.55 of the Borders, Citizenship and Immigration Act 2009, see *R. (on the application of Tinizaray) v Secretary of State for the Home Department* [2011] EWHC 1850 (Admin).

WELFARE SERVICES. Stat. Def., “includes services which provide support, assistance, advice or counselling to individuals with particular needs”, (s.93(12) of the Local Government Act 2000 (c.22)).

WELL AND TRULY. “Well and truly administer”: see ADMINISTER.

“Well and truly” execute a building contract, and liability of surety thereon: see *Kingston v Harding* [1892] 2 Q.B. 494.

WELL-BEING. Where land was to be used for the promotion of religious, social and physical “well-being” of certain persons, “well-being” meant primarily a happy or contented state (*IRC v Baddeley* [1955] A.C. 572).

“114 As already stated, the expression ‘promote the well-being’ is a general one. Well-being is defined in the Shorter Oxford Dictionary as a ‘happy, healthy or prosperous condition; moral or physical welfare’. The expression is commonly enough used but rarely, I suspect, in a context such as the present. I accept that the words have, and were intended to have, a broad meaning and were intended to prevent an over-technical approach to the definition of powers. The Government’s purpose was stated in the guidance (paragraphs 5 and 6) to be to reverse the ‘traditionally cautious approach’ to ‘innovation and joint action’. Beyond that, analysis must be attempted, however, and, in the context of the wording of the statute, the explanatory note and guidance, and the entire relevant body of the law in this area.” (*R. (on the application of Brent LBC) v Risk Management Partners Ltd* [2009] EWCA Civ 490.)

Stat. Def., “in relation to children, means their well-being so far as relating to—(a) physical and mental health and emotional well-being; (b) protection from harm and neglect; (c) education, training and recreation; (d) the contribution made by them to society; (e) social and economic well-being” (Childcare Act 2006 s.1). See also Education Act 1996 s.507B(13) inserted by Education and Inspections Act 2006 s.6. Note, however, that the inclusion of para.(d), “the contribution made by them to society”, is of a strikingly different nature to the other matters listed, and is not obviously a question of the well-being of the person concerned (and its inclusion as such could have significant, even Orwellian, implications, that would require careful thought to be given in replicating this definition for other purposes).

WELL-BEING (OF A PERSON). Stat. Def., Social Services and Well-being (Wales) Act 2014 s.2.

WELL-FOUNDED FEAR OF PERSECUTION. “Owing to a well-founded fear of being persecuted” (art.1A(2) of the United Nations Convention (1951) and Protocol (1967) Relating to the Status of Refugees (Cmd.9171 and Cmd.3096)). Although the existence of a state of fear is clearly a subjective matter the question whether the fear is “well-founded” has to be assessed by the Secretary of State on an objective basis in the light of facts and circumstances known to him or established to his satisfaction (*R.*

v Secretary of State for the Home Department, Ex p. Sivakumaran [1988] 2 W.L.R. 92; *R. v Secretary of State for the Home Department, Ex p. H.*, *The Times*, June 20, 1988).

“Well-founded fear of persecution” (Immigration Rules 1983, H.C. 251, para.75). Where an asylum-seeker had a fear of persecution in his home village, but not in any other part of his country of origin to which he might return, the fear was not “well-founded” to the extent of justifying a grant of asylum (*Yurekli v Secretary of State for the Home Department* [1991] Imm.A.R. 153; *R. v Secretary of State for the Home Department, Ex p. Gunes (Hidir)* [1991] Imm.A.R. 278). There could be no “well-founded” fear of persecution for members of a sect who had not actually suffered religious persecution nor preached nor shown any intention to preach their religion; the mere existence of a law prohibiting the sect from seeking converts was not enough to found a fear of persecution (*R. v Secretary of State for the Home Department, Ex p. Ahmad* [1990] Imm.A.R. 61). In determining whether a person had a “well-founded” fear of being persecuted if he were deported to a particular country, information from that country’s High Commissioner was relevant and could be taken into account (*R. v Secretary of State for the Home Department, Ex p. Mendis* [1990] Imm.A.R. 6). Experience of a situation in Germany, where there had been sporadic neo-Nazi attacks, could not amount to a well-founded fear of persecution for the purposes of these Rules (*R. v Secretary of State for the Home Department, Ex p. Singh (Mangal)* [1992] Imm.A.R. 376; *Singh (Balbir) v Secretary of State for the Home Department* [1992] Imm.A.R. 426). In exceptional circumstances, the making of an application for asylum could create the possibility of an applicant being subject to persecution if returned to his country of origin and the making of a fraudulent claim could not necessarily act as a total barrier to the reconsideration of an applicant’s status as a refugee (*M. v Secretary of State for the Home Department* [1996] 1 W.L.R. 507).

WELL KNOWN. “‘As the court well knew’; that is to say, ‘had judicial knowledge’” (per Willes J., *London v Cox*, L.R. 2 H.L. 277).

See PRECATORY TRUST.

WELL LIGHTED. A “well lighted” room “is obviously a comparative expression; it may mean well lighted taking the average of rooms, or it may mean well lighted taking the average of the opinions of the people of the present day as to the quantity of light that is required” (per Williams L.J., *Kine v Jolly*, 74 L.J.K.B. 182; see also LIGHT).

WELL SECURED. An annuity described in particulars of sale as “well secured”, e.g. on the once existing Waterloo Bridge tolls, is not thereby represented as being on a good money-value security, but merely that its legal obligation has been effectually perfected (*Coverley v Burrell*, 2 Starkie, 295). See SECURED; SECURITY.

WELL SUPPLIED. When property is sold under a representation that it is “well supplied with water”, that means that the property is “supplied with water by a spring rising in it, or by a running stream passing through or into it, and so supplied as a matter of right, belonging or incident to the property, without rent or payment of any kind for the water or its use” (per Knight-Bruce L.J., *Leyland v Illingworth*, 29 L.J. Ch. 614).

WELLBOAT. Stat. Def., “a vessel that contains a tank or well for holding water (including sea water)—

(a) into which live farmed fish may be taken, and

WELSH

(b) in which the fish may be subsequently kept,

for . . .

- (a) the transportation of farmed fish,
- (b) the storage of farmed fish,
- (c) the slaughter of farmed fish,
- (d) the treatment of farmed fish in connection with health, parasites, pathogens or diseases,
- (e) the grading of farmed fish.” (Aquaculture and Fisheries (Scotland) Act 2013 s.4).

WELSH. A gift for the establishment and maintenance of an institute in London for promoting the moral, social, spiritual, and educational welfare of Welsh people and fostering the study of the Welsh language and of Welsh history, literature, music and art was held not to be charitable (*Williams’ Trustees v Inland Revenue Commissioners* [1947] A.C. 447).

WELSH ASSEMBLY. See NATIONAL ASSEMBLY FOR WALES.

WELSH ASSEMBLY GOVERNMENT. Stat. Def., Government of Wales Act 2006 s.45(1).

WELSH BODY. Stat. Def., s.10(2) of the International Development Act 2002 (c.1).

WELSH CASE. “In this practice direction ‘Welsh case’ means a case which is before the tribunal in which all ‘individual parties’ are resident in Wales or which has been classified as a Welsh case by the tribunal.” (*Practice Direction (First-tier and Upper Tribunals: Welsh Language)* [2009] 1 W.L.R. 331 Upper Tribunal).

WELSH COMPANY. Stat. Def., Companies Act 2006 s.88.

WELSH CONSOLIDATED FUND. Stat. Def., Government of Wales Act 2006 s.117.

WELSH GOVERNMENT. Stat. Def., Wales Act 2014 s.4.

WELSH INSHORE REGION. Stat. Def., Marine and Coastal Access Act 2009 s.322.

WELSH OFFSHORE REGION. Stat. Def., Marine and Coastal Access Act 2009 s.322.

WELSH MINISTERIAL AUTHORITY. Stat. Def., Statistics and Registration Service Act 2007 s.6(5).

WELSH MINISTERS. Stat. Def., Government of Wales Act 2006 s.45(2).

WELSH PUBLIC RECORDS. Stat. Def., Government of Wales Act 2006 s.148.

WELSH SEAL. Stat. Def., Government of Wales Act 2006 s.116(1).

WENSLEYDALE’S (LORD) ACT. Marriage Confirmation Act 1860 (c.24); see also PARKE’S ACT.

WERE. “*Were* is an old Saxon word, sometime written *wera*, and signifieth the price of the life of a man, *estimatio capitis*, that is, so much as one paid for the killing of a man” (Co. Litt. 287B). “*Wera* or *were* sometimes signifieth americiament” (Co. Litt. 127A).

Cp. WEIR.

WESTBURY’S (LORD) ACTS. Domicile Act 1861 (c.121); Bankruptcy Act 1861 (c.134); Land Registry Act 1862 (c.53); Fine Arts Copyright 1862 (c.68); Companies Act 1862 (c.89); Clerks of the Peace Removal Act 1864 (c.65); Improvement of Land Act 1864 (c.114); Liquidation Act 1868 (c.68).

WESTMINSTER. The Statutes of Westminster are the Acts passed at the three parliaments of Edward I held at Westminster, i.e. Westm. 1, A.D. 1275, consisting of 51 chapters; Westm. 2, A.D. 1285, consisting of 50 chapters; and Westm. 3, A.D. 1290, consisting of three chapters. Of these, c.1, Westm. 2 (generally now cited as 13 Edw. I, c.1) is the famous statute *De Donis*, or, more fully, *De Donis Conditionalibus* (those being its commencing words), which is the origin of our law of estates tail: "tenant in fee tail is by force of the Statute of Westm. 2, c.1, for, before the said statute, all inheritances were fee simple" (Litt. s.13; see further *Jordan v Roach*, 32 Miss. 603; 2 Bl. Com. 109 et seq.; Wms. R.P. Pt 1, Ch.2; GOODEVE, (9th edn), 14). Cp. *QUIA EMPTORES*.

The Statute of Westminster 1931 (c.4), regulates the relations between the United Kingdom and the Dominions.

WET. A wet dock "may not unreasonably be held, according to the definitions in the dictionaries, to include a place which admits ships and then excludes the tide if required" (per Barnes J., *The Mercedes de Larrinaga* [1904] P. 229).

Full and complete cargo of wet woodpulp: see *Isis SS Co v Bahr* [1899] 2 Q.B. 364, affirmed in House of Lords [1900] A.C. 340.

WHARF. "'Wharfe' is a word used in the Statute of 1 Eliz., c.11, and other statutes, and it is a broad place neare to a creek or hithe of water, upon which goods and wares are laid, which are to bee shipt and transported from place to place" (Termes de la Ley). To the same effect are the United States decisions (*Doane v Broad Street Association*, 6 Mass. 334; *Geiger v Filor*, 8 Florida, 332).

So, "wharf", in the definition of "factory", in Workmen's Compensation Act 1897 (c.37), was used in its popular sense of "a place contiguous to water, used for the purpose of loading and unloading goods, and over which goods pass in loading and unloading. It is essential to a wharf that goods should be in transit over it. The primary idea is that it is a place used, not for storing goods, but in the process of their transit to or from water" (per Collins L.J., *Haddock v Humphrey* [1900] 1 Q.B. 609). See this case for an example of a yard nearly adjoining but not part of a "wharf" (*Haddock v Humphrey* distinguished in *Kenny v Harrison* [1902] 2 K.B. 168). See further *Ellis v Cory*, 71 L.J.K.B. 72. See also *Owens v Campbell* [1904] 2 K.B. 64, cited IN OR ABOUT; DOCK; ACTUAL USE OR OCCUPATION.

"Wharf" in a Rating Act: see *R. v Regent's Canal Co*, 6 B. & C. 720.

"Wharf or quay" (Docks Regulations 1934 (No.279) reg.1) does not include a gantry or warehouse (*Jarvis v Hay's Wharf* [1967] 1 Lloyd's Rep. 329).

"Sufferance wharf": see *SUFFERANCE*.

Stat. Def., Explosives Act 1875 (c.17) s.108; Merchant Shipping Act 1894 (c.60) s.492; Thames Conservancy Act 1894 (c. clxxxvii) s.3; Harbours Act 1964 (c.40) s.57.

See DOCK; FACTORY; PUBLIC WHARF; QUAY.

WHARFAGE. "Wharfage, or keyage, a duty for the pitching or lodging of goods upon a wharf" (Hale, *De Portibus Maris*, Ch.6).

"A duty for wharfage and crantage cannot be due where the party has not had use of the wharf or crane. Wharfage is due for landing on the wharf" (per Mansfield C.J., *Stephen v Costor*, 3 Burr. 1415, cited by Dunedin L.P., *Seafield v MacBrayne*, 43 Sc. L.R. 711, who says that wharfage, "according to the ordinary use of the word, is a rate for things landed on the wharf, and not for a ship merely touching at it").

WHARFINGER. "Is he that owns or keeps a wharfe, or hath the oversight or management of it" (Cowel). See hereon *Chattock v Bellamy*, 64 L.J.Q.B. 250; *Tredegar Iron Co v SS Calliope* [1891] A.C. 11.

See WHARF.

WHAT IS LEFT. See LEFT; REMAIN; RESIDUE.

WHATEVER. "Any cause whatever": see ANY. See *Borthwick v Elderslie SS Co* [1905] A.C. 93, cited ANY.

"All expenses whatever": see EXPENSES.

"Any purpose whatever": see AVAILABLE.

"Whatever remains": see REMAIN; WHAT IS LEFT.

See WHATSOEVER.

WHATSOEVER. "Whatsoever", as a rule, excludes any limitation or qualification, and implies that the genus to which it relates is to be understood in its utmost generality (per Fry L.J., *Duck v Bates*, 13 Q.B.D. 851). The same learned judge (in construing a reservation in a conveyance in fee of "all mines of coal, culm, iron, and all other mines and minerals whatsoever, except stone quarries") said, "Those words are intended to mean that which they express; and where you find the word 'whatsoever' following upon certain substantives, it is often intended to repel, and in this case does effectually repel, the implication of the so-called doctrine of ejusdem generis, which I think has often been urged for the sake of giving, not the true effect to the contracts of parties, but a narrower effect than they were intended to have" (*Jersey v Neath*, 22 Q.B.D. 565 at 566); that judgment was cited by Loreburn C. in *Larsen v Sylvester* [1908] A.C. 295, in which case it was held that the ejusdem generis rule did not apply to an exception in a charterparty which mutually exempted the parties from liability for "any other unavoidable accidents or hindrances of what kind soever beyond their control". See further per Hardwicke C., *Tilley v Simpson*, 2 T.R. 659, fn.; per Williams J., *Perry v Davis*, 3 C.B.N.S. 777. But see *Fish v Jesson*, 2 Vern. 114, cited DEMAND.

"The insertion of the word 'whatsoever' has been held, in several of the cases to which we have been referred, to make a great difference in the interpretation of an exempting clause, and to enlarge its operation" (per Cockburn C.J., *R. v Kent Justices*, 29 L.J.M.C. 193).

"I devise all my goods and chattels, moneys, debts, and whatsoever else I have in the world not before disposed of" to A; held, to pass an estate in fee (*Hopewell v Ackland*, 1 Salk. 239). So, where the words were "whatever I may die possessed of" (*Davenport v Coltman*, 11 L.J. Ex. 114; *Evans v Jones*, 46 L.J. Ex. 280). See hereon 2 Jarm. (8th edn), 986.

But sometimes even such a wide phrase as "whatsoever and wheresoever" will receive a restricted meaning: see *Johnson v Telford*, 1 Russ. & My. 244; *Maxwell v Maxwell*, 22 L.J. Ch. 43.

So, if a condition of sale enables a vendor to rescind if any objection be made "in respect of title or of any other matter or thing whatsoever, which the vendor shall be unwilling" to satisfy, that does not apply where the vendor, having only the last remaining month of a term, purports to sell the fee simple (*Bowman v Hyland*, 8 Ch. D. 588, distinguished *Re Deighton and Harris* [1898] 1 Ch. 458, cited RELATING). See further *Re Jackson and Haden* [1905] 1 Ch. 603, cited TITLE; LITIGATION.

The use of the word “whatsoever” in the expression “or by any other cause whatsoever” in a charterparty had the effect of excluding the application of the *ejusdem generis* rule (*Sidermar SpA v Apollo Corp*; *The “Apollo”* [1978] 1 Lloyd’s Rep. 200).

See **WHATEVER**; **WHERESOEVER**; see further *Mirams v Our Dogs Co* [1901] 2 K.B. 564, cited **PROPERTY**.

WHEELBARROW. “Carriages to be *ejusdem generis* with ‘wheelbarrow or such like carriage’, would have to consist of what might come within that class in the contemplation of the legislature at the time the Act was passed” (per Alverstone C.J., *Simpson v Teignmouth Bridge Co* [1903] 1 K.B. 415; see further **CARRIAGE**).

WHEN. “When” usually creates a **CONDITION** precedent (*Jolly v Hancock*, 7 Ex. 820).

Where there is a testamentary gift to A, “if”, or “when”, or “provided”, or “in case”, or “so soon as” (phrases which are synonymous, *Shrimpton v Shrimpton*, 31 Bea. 425; see also *Goss v Nelson*, 1 Burr. 227; *Hanson v Graham*, 6 Ves. 243), a certain event happens—e.g. attaining a stated age—such a gift, standing unaffected by the context, confers only a contingent interest, and requires the happening of the event to give it validity. But with the aid of a context such words may, without difficulty, not defer the vesting of the subject-matter of the gift, but merely refer to the futurity of its possession (2Jarm. (8th edn), 1360 et seq.; *Boraston’s Case*, 3 Rep. 19 a; *Hanson v Graham*, 6 Ves. 239; *Phipps v Ackers*, 3 Cl. & F. 703; *Andrew v Andrew*, 1 Ch. D. 410, cited **FROM AND AFTER**; *Scotney v Lomer*, 29 Ch. D. 535; 31 Ch.D. 380; *Re Wrey Stuart v Wrey*, 30 Ch. D. 507). See further *Re Francis* [1906] 2 Ch. 300, in which case Swinfen Eady J. said, “There is no difference between ‘on his attaining’ and ‘when’, or ‘if’, or ‘at’ a stated age; all equally imply contingency”. It has also been said that “‘when’ cannot be considered as so strongly indicating contingency as ‘provided’ and ‘if’” (Watson Eq. 1217, and cases there cited).

Where the gift is to a class “who”, or “as”, shall attain a certain age, the rule (nearly universally applied) is to regard the attainment of the age as part of the description of the beneficiary, and to construe the gift as contingent, “upon the ground that no one could claim who could not predicate of himself that he was of the age required” (see Wigram V.C., *Bull v Pritchard*, 16 L.J. Ch. 185; *Festing v Allen*, 13 L.J. Ex. 74; see further 2 Jarm. (8th edn), 1371, 1372). But even this construction may yield to a context, e.g. “born or to be born in due time” after the decease of the life tenant (*Muskett v Eaton*, 1 Ch. D. 435; *Lambert v Parker*, Cooper, G., 143; 2 Jarm. (8th edn), 1372, 1675 et seq.).

Where a legacy is payable out of a specified fund “when got in”, or “when recovered”, or “when received”, the right to interest on it is not suspended or postponed (*Entwisle v Markland*, 6 Ves. 528, n.; *Sitwell v Bernard*, 6 Ves. 520; *Wood v Penoyre*, 13 Ves. 336, 337).

Capital money “when received” (Settled Land Act 1882 (c.38) s.21) includes money to arise at a future date (*Re Norfolk* [1900] 1 Ch. 461, cited **IMPROVEMENT**). See Settled Land Act 1925 (c.18) s.73.

See **AS AND WHEN**; **ON**; **SO SOON AS**.

WHENEVER. Where a clause in a lease provides for forfeiture “if and whenever” rent is in arrear, that means as often as the rent shall remain in arrear at any moment of time, and the forfeiture is not waived by a distress which does not yield sufficient to satisfy the rent due (*Shepherd v Berger* [1891] 1 Q.B. 597). See **IF**.

WHERE

As to the comprehensiveness of “whenever”, e.g. s.31(6) of the Summary Jurisdiction Act 1879 (c.49): see per Lord Herschell, *Boulter v Kent Justices* [1897] A.C. 556, cited COURT OF SUMMARY JURISDICTION.

But “whenever it appears” to the county council that a house or room for dancing, music, or such like, “is so defective in its structure” as to be in danger from fire (Metropolis Management Act 1878 (c.32) s.11) did not mean “so often as”, but meant that at “whatever time it so appears”; i.e. the notice under the section was to be given once for all “whenever” the council chose, and, when complied with, it was final not only as to the works ordered being required, but also as to those works being sufficient (*St. James’s Hall Co v London CC* [1901] 2 K.B. 251). Cp. FRONTING.

Where, by a deed of appointment, certain property was directed to be held on trust for such of the children of the appointor’s two sons, “whenever born”, as should attain the age of 21, and if more than one in equal shares, it was held that the words “whenever born” were quite definite and meant that the class could not close until no further members could be born (*Re Edmondson’s Will Trusts* [1972] 1 W.L.R. 183).

WHERE. “Where there is more than one hatchway”, in reg.19 of S.R. & O., 1904, No.1617, meant not where upon any ship there was more than one hatchway, but where the person employed upon the process had used or using or was about to use for the purposes of his employment more than one hatchway: see *Owner v King & Sons*, 39 T.L.R. 22.

“Where the rent payable . . .” (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17) s.12(7)) might have meant “in cases in which” but more probably meant “if and so long as” (*Woozley v Woodall Smith* [1950] 1 K.B. 325).

“Where” (Finance Act 1953 (c.34) s.20) did not refer to a place. It was used in the sense of “if” or “whenever” (*Davies Jenkins & Co v Davies* [1968] A.C. 1097).

WHERE THE CONTEXT PERMITS. “This is a familiar phrase adopted by draftsmen to accommodate the use of a single defined term to describe more than one possible person or object. The context is ordinarily provided by the provision in the legislation or instrument which will indicate by its own words and subject-matter whether the extended definition should apply. In this case the only context to be derived from s.71A is that of an arrangement between a person and financial institution under which the financial institution purchases a major interest from the ‘vendor’. The choice between PBL and the MoD as vendor in relation to that purchase turns on a choice between the real and the SDLT world and, for the reasons I have explained, I can see nothing in the context of s.71A to encourage, let alone compel, an exit from the SDLT world in relation to an exemption from a charge to SDLT. But if one looks at the wider context in terms of the policy of the legislation and, in particular, the operation of s.71A then the case for treating PBL as the vendor becomes even less convincing.” (*Project Blue Ltd v Revenue and Customs* [2016] EWCA Civ 485.)

WHEREAS. Notwithstanding the doctrine in Co. Litt. 352B, that a recital doth not conclude “because it is no direct affirmation”, yet if there be a direct affirmation it is none the less positive, and is as effective to work an estoppel, though introduced by a “whereas” (*Bowman v Taylor*, 4 L.J.K.B. 58, and *Smith v Scott*, L.J.C.P. 325, both cited INVENTED).

WHEREBY. For circumstances in which a series of transactions failed as a tax avoidance scheme because one of them was held to be a “transaction whereby any

other person... has received an abnormal amount by way of dividend" contrary to s.461C of the Income and Corporation Taxes Act 1970 (c.10) (see *Bird v IRC* [1985] S.T.C. 584).

WHERESOEVER. "Wheresoever" points to locality, and therefore, as regards a testamentary gift, it is "peculiarly applicable to real estate" (per Turner V.C., *Stokes v Salomons*, 20 L.J. Ch. 343).

See **WHATSOEVER**; **WHOSOEVER**.

WHEREUPON. See **THEREUPON**.

WHERRY. "A 'wherry' and a 'lighter' are in common parlance, boats plying for hire and carrying passengers or goods" (per Erle J., *Reed v Ingham*, 23 L.J.M.C. 156); a steam-tug was not a "wherry, lighter, or other craft", within s.37 of the Watermen's and Lightermen's Act 1827 (c. lxxv) (*Reed*), nor was a coal brig a "lighter, vessel, barge, or other craft", within s.4, Regulation of Vend, etc. of Coals Act 1838 (c. ci) (*Blanford v Morrison*, 15 Q.B. 724).

WHETHER. "Whether", following a general bequest, is a term of enumeration, and does not enlarge or affect the generality (per Fry J., *Re Greaves*, 23 Ch. D. 313; see further *Re Pickup*, 30 L.J. Ch. 278).

The Matrimonial Causes Rules 1937 r.4(1)(f) provided that a petition should state whether there had been any resumption of cohabitation. This meant "aye" or "no" as to such resumption. If there had been no resumption the negative fact had to be pleaded (*Bishop v Bishop* [1942] P. 41).

The phrase "whether in berth or not" (wibon) incorporated into the laytime provisions of a berth charterparty applied only where a berth was not available. It did not apply where a berth was available but the ship was unable to reach it because of fog (*Bulk Transport Shipping Co v Seacrystal Shipping, The Kyzikos* [1988] 3 W.L.R. 858).

WHICH. See hereon *Miles v Harrison*, 9 Ch. 316.

Read "as", in *Whateley v Spooner*, 3 K. & J. 542.

"Whichever is the later" (Inheritance (Family Provision) Act 1938 (c.45) s.1(1)(a)): see *Re Pointer* [1941] Ch. 60.

WHILST. A grant by lease of the use of a thing "whilst" the same remains on the premises reserves to the lessor the right to remove the thing (*Rhodes v Bullard*, 7 East, 116).

Acts said to have been done "whilst" a lunatic was in a person's care, semble, does not amount to an averment that he ever was in such care (*R. v Pelham*, 8 Q.B. 965).

"If and while": see *Cox v Truscott*, 21 T.L.R. 319, cited **CONCERNED IN**; cp. "during", *Royce v Birley*, L.R. 4 C.P. 296, cited **HOLD**.

In a comprehensive private motor-car insurance policy, the words "whilst under the influence of intoxicating liquor" connotes a disturbance to the intelligent exercise of the faculties. The word "whilst" has a temporal meaning and does not introduce any requirement of a causal connection between the injury sustained and the state of being under the influence of intoxicating liquor (*Louden v British Merchants Insurance Co* [1961] 1 W.L.R. 798).

"Whilst towing": see **TOWAGE**.

See **DURING**; **REMAIN**.

WHISKY. Whisky Def., Scotch Whisky Act 1988 (c.22) s.3.

"Vodka and whisky fall into this category. Although they do not denote and are not derived from any particular geographical location, they have, as a matter of language,

come to be used to describe particular types of spirit distilled in a particular way. To that extent they are no different in descriptive terms from the other examples of well-known commodities relied on by Mr Wyand such as beer or butter. Products of this kind cannot acquire a secondary meaning in their own descriptive name. If they are to qualify for protection under the extended form of passing-off it can only be because they have acquired a reputation and goodwill in their own name by dint of the qualities or characteristics which they possess. This point was made in the Court of Appeal by Chadwick LJ in *Chocosuisse Union des Fabricants Suisses de Chocolat v Cadbury Ltd* [1999] RPC 826 ('Chocosuisse'), a decision to which I will return later in this judgment." (*Diageo North America Inc v Intercontinental Brands (ICB) Ltd* [2010] EWCA Civ 920.)

See SCOTCH WHISKY; SINGLE MALT SCOTCH WHISKY; SINGLE GRAIN SCOTCH WHISKY; BLENDED MALT SCOTCH WHISKY; BLENDED GRAIN SCOTCH WHISKY.

WHISTLE-BLOWING ARRANGEMENTS. Stat. Def., Commissioner for Older People (Wales) Act 2006 s.5(6) and (7).

WHO. "A person who in the United Kingdom . . . does any act with intent to cause a fire or explosion" (Explosive Substances Act 1883 (c.3) s.3(1), as amended by s.7 of the Criminal Jurisdiction Act 1975 (c.59)). The word "who" refers to the act done by a person and not to the person carrying out the act, creating a geographical limitation on the act. Therefore, any person who is an alien and does not enter the United Kingdom, but conspires to cause an explosion in the United Kingdom, is guilty of an offence under this section (*R. v Ellis (Desmond)* (1992) Cr.App.R. 52).

See ATTAIN; HAVE; LIVING; WHEN.

WHOLE. "A kinsman of the whole blood is he that is derived not only from the same ancestor, but from the same couple of ancestors" (2 Bl. Com. 226). Cp. HALF-BLOOD.

"Whole body of justices" (Licensing Act 1904 (c.23) s.8(2)): see *R. v Leeds Justices*, 76 L.J.K.B. 111, overruled by Licensing Act 1906 (c.42) s.1.

"Whole of the burden of depreciation" (Finance Act 1937 (c.54) s.15(1)). A lessee who entered into strict repairing covenants in the common form did not undertake "the whole of the burden of any depreciation of the premises" (*Boarland v Pirie, Appleton & Co Ltd* [1940] 2 K.B. 491).

"Whole case" (Criminal Appeal Act 1968 (c.19) s.17(1)(a)). Power under this section to refer the whole case includes a power to refer a part of the case (*R. v Bardoe* [1969] 1 W.L.R. 398).

"Whole cause of action": see CAUSE OF ACTION.

"Whole circumstances": see CIRCUMSTANCES.

"Whole currency": see CURRENCY.

"Whole debt" (Bankruptcy Act 1914 (c.59) Sch.I cl.10): see *Re Pawson* [1917] 2 K.B. 527; *Re Maxson* [1919] 2 K.B. 330.

In this case where an Indian father had settled in England with his wife and two daughters leaving two sons in India, and the younger son then applied to enter the United Kingdom, it was held by the Court of Appeal that it could not be said that the "whole family" were settled in England while there was a brother still in India. *Secus* if the older brother had left home and married and thus started his own family (*Harmail Singh v Vice-President of the Immigration Appeal Tribunal, The Times*, July 12, 1978).

"Whole holiday": Stat. Def., Shops Act 1950 (c.28) s.22(2)(b).

A testamentary declaration that “the whole income” derived from specified property should be paid to A for life, was an express stipulation within s.7 of the Apportionment Act 1870 (c.35) that no apportionment should take place (*Re Meredith*, 67 L.J. Ch. 409, cited EXPRESSLY STIPULATED).

“The authorities on the point are in conflict, but the view I take is this: (1) Where a legacy is given vesting at a future time, and the ‘whole’ of the intermediate interest is given to the legatee in any event, then the entire gift, principal and interest, is absolutely devoted to the legatee’s use, and vests *in præsenti*; (2) if, on the other hand, the ‘whole’ of the intermediate interest is ‘not’ so given, but only some discretionary portion thereof, it cannot be said that the entire gift, principal and interest, is absolutely devoted to the legatee’s use, and in such a case the gift does not vest *in præsenti*” (per North J., *Re Wintle* [1896] 2 Ch. 719). The gift of the intermediate interest may be either direct or in the form of maintenance, provided it be of the whole interest in any event (*Watson v Hayes*, 9 L.J. Ch. 49); but a direction to apply the “whole” of the intermediate interest “or such part as the trustees may think fit” towards, e.g. benefit or maintenance, gives direction, and is not a direction to apply the whole intermediate income in any event, and does not effectuate a vesting in the beneficiary (*Leake v Robinson*, 2 Mer. 363; *Re Grimshaw*, 11 Ch. D. 406; *Dewar v Brooke*, 14 Ch. D. 529; *Re Wintle*, above, dissenting from *Fox v Fox*, L.R. 19 Eq. 286; *Re Sanderson*, 26 L.J. Ch. 804; *Re Stanger*, 60 L.J. Ch. 326; 2 Jarm. (8th edn), 1402). Cp. RENTS AND PROFITS. But *Fox v Fox* (above) was approved by Court of Appeal in *Re Turney* ([1899] 2 Ch. 739) and was followed by Neville J., *Re Williams* ([1907] 1 Ch. 180), who regarded *Re Wintle* (above) as of doubtful authority; *Fox v Fox* and *Re Williams* were followed in *Re Ussher* [1922] 2 Ch. 32. See further *Re Andrew’s Trust* [1905] 2 Ch. 48, in which last case *Re Sanderson* (above) was cited and its principles applied, but so that (on the facts) the beneficiaries were regarded as the absolute owners.

“Whole of his interest” (Income Tax Act 1952 (c.10) s.314(4), now Capital Allowances Act 1968 (c.3) s.68(4)). A taxpayer who settles land and at the same time takes a lease back from the trustees does not transfer the “whole of his interest” in that land to some other person, within the meaning of this section (*Sargaison v Roberts* [1969] 1 W.L.R. 951).

“Whole means and estate”: see MEANS.

“Whole of the said mine”: see *Watson v Charlesworth* [1905] 1 K.B. 74, cited WIN.

“Whole reach or burthen of the vessel”: see *Weir v Union SS Co* [1900] 1 Q.B. 28, cited CLEAR.

In an agreement for personal service, a negative obligation will not be enforced by injunction unless there be an express stipulation; not even where the employee contracts to give his “whole time” to his employer’s service (*Whitwood Co v Hardman* [1891] 2 Ch. 416, overruling *Montague v Flockton*, L.R. 16 Eq. 189), or that he will “act exclusively” for his employer (*Mutual Reserve Association v New York Insurance*, 75 L.T. 528). But where the contract is not one of personal service, but is, e.g. one to take from the contractee “the whole of the electric energy required”, that imports a negative obligation not to take energy from any other supplier, an obligation which may be enforced by injunction (*Metropolitan Electric Supply Co v Ginder* [1901] 2 Ch. 799, cited UNDUE PREFERENCE, applying *Catt v Tourle*, 4 Ch. 654, cited EXCLUSIVE RIGHT, and distinguishing *Fothergill v Rowland*, L.R. 17 Eq. 132).

WHOLESALE

“Whole time employment”. A person was not in a landlord’s whole time employment, within s.5(1) of the Increase of Rent, etc. (Restrictions) Act 1920 (c.17), unless he was not only engaged but actually working for the landlord: see *Spencer v Fox*, 91 L.J.K.B. 929.

“Whole time employee” (Local Government Superannuation Regulations 1974 (SI 1974/520) reg.A3(1)). In deciding whether a retained fireman was a “whole-time employee” within the meaning of this regulation regard had to be made to the hours in each week he was contractually required to be available on call. So that a fireman who was on call for more than 30 hours was a whole-time employee, notwithstanding that he had attended at the fire station for less than 30 hours each week (*Suffolk CC v Secretary of State for the Environment* [1984] I.C.R. 882).

“Whole value of the undertaking” (Finance Act 1927 (c.10) s.5(1)) means the gross, not the net value of the assets (*Gomme (E.) v IRC* [1964] 1 W.L.R. 1348).

Tenement occupied “one whole year, at the least” (Poor Relief (Settlement) Act 1825 (c.57) s.2): see *R. v Ormesby*, 4 B. & Ad. 214; *R. v Herstmonceaux*, 7 B. & C. 551; *Hastings v St. James, Clerkenwell*, L.R. 1 Q.B. 38.

Where business premises were empty for a very short period, it was unlikely that a court would find that they had not been occupied “for the whole of a five year period” (*Baccocchi v Academic Agency Ltd* [1998] 2 All E.R. 241).

“Taking the case as a whole”: see AS A WHOLE.

See WHOLLY.

WHOLESALE. “As a general rule ‘wholesale’ merchants deal only with persons who buy to sell again; whilst ‘retail’ merchants deal with consumers” (per Bacon V.C., *Teacher v Treacher* [1874] W.N. 4).

The sale of 412 gallons or more of beer was a sale “by wholesale” within s.72(9) of the Licensing Act 1872 (c.94) (*R. v Jenkins*, 61 L.J.M.C. 57).

“Wholesale value” (Finance (No.2) Act 1940 (c.48) s.21(1)). As to questioning the “wholesale value” placed on articles for purchase tax purposes by the Commissioners of Customs and Excise: see *Att-Gen v A. W. Gamage* [1949] 2 All E.R. 732.

The “wholesale value” of goods under s.3(2) of the Purchase Tax Act 1963 (c.9) could not be more than the price actually paid for them (*Moris Products v Customs and Excise Commissioners* [1969] 1 W.L.R. 1585).

Stat. Def., Alcoholic Liquor Duties Act 1979 (c.4) s.65; Finance Act 1981 (c.35) Sch.8 para.11.

WHOLESOME. See PURE.

WHOLLY. A solicitor was held to be “wholly disabled from following his usual business” within the meaning of an accident policy when he was confined to his private room by a sprained ankle, even though he was available for consultation, could write letters and deal with some of the matters brought to him by his staff (*Hooper v Accidental Insurance*, 29 L.J. Ex. 340, 484).

Policy “wholly” or “partially kept up” for the benefit of a donee (Customs and Inland Revenue Act 1889 (c.7) s.11(1)) did not include a policy gratuitously assigned, the premium on which, since the assignment, had been paid by the assignee (*Lord Advocate v Fleming* [1897] A.C. 145).

A society was not “supported wholly or in part by annual voluntary contributions” within the meaning of s.1 of the Scientific Societies Act 1843 (c.36) where these amounted to only 607 out of a total gross income of 28,000 (*Nonentities Society v Linley and Kidderminster BC* (1954) 47 R. & I.T. 426).

“Wholly maintained by voluntary contributions” (Charitable Trusts Act 1853 (c.137) s.62). A charity was not “wholly maintained by voluntary contributions” within the meaning of this section if it had freehold premises used for the purposes of the charity, and it was immaterial that the premises produced no income (*Att-Gen v Mathieson* [1907] 2 Ch. 383; *Neville Estates v Madden* [1962] Ch. 832).

“Wholly or mainly occupied” (Rating and Valuation Act 1961 (c.45) s.11(1)(a)). A seaside holiday centre for miners and their families was “wholly or mainly occupied” for charitable purposes (*Wynn v Skegness UDC* [1967] 1 W.L.R. 52). The estate offices and the premises occupied by the estate’s governors for the purposes of administering a wholly charitable estate are covered by this section (*Aldous v Southwark LBC* [1968] 1 W.L.R. 1671).

A house is used by a charity “wholly or mainly for charitable purposes” within s.4(2)(a) of the Local Government (Financial Provisions, etc.) (Scotland) Act 1962 (c.9) where it is occupied by an officer employed by the charity in order to facilitate the carrying out of charitable purposes (*Glasgow Corp v Johnstone* [1965] A.C. 609).

“Wholly or mainly” (Education (Mandatory Awards) Regulations 1982 (SI 1982/954) reg.13(1)(a) as amended by Education (Mandatory Awards) No.2 Regulations 1983 (SI 1983/477) reg.2). A British citizen who left the United Kingdom at the age of four, returned thirteen years later to study for the G.C.E. exams, and subsequently applied for a local authority grant to attend a polytechnic, was held to have been in the United Kingdom “wholly or mainly for the purpose of receiving full-time education” within the meaning of this regulation (*R. v Hereford and Worcester CC Ex p. Wimbourne* (1984) 82 L.G.R. 251).

“Cause of action wholly or in part arose” (County Court Rules 1936 Ord.2 r.1): see CAUSE OF ACTION.

“Wholly maintained by voluntary contributions”: see SCIENCE; VOLUNTARY CONTRIBUTIONS.

“Wholly owned subsidiary”: Stat. Def., Companies Act 1948 (c.38) s.150(4).

See WHOLE.

Stat. Def., Transport Act 1981 (c.56) s.14; London Regional Transport Act 1984 (c.32) s.68.

WHOLLY AND EXCLUSIVELY. “Wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation” (Income and Corporation Taxes Acts 1970 (c.10) s.130(a), 1988 (c.1) s.74(a)). Contributions made by a partnership towards the removal costs of those partners required to relocate were not incurred “wholly and exclusively” “for the purposes” of the “profession” (*MacKinlay v Arthur Young McClelland Moores and Co* [1989] 3 W.L.R. 1245). Payments by a company to trustees of a settlement set up to secure the company’s future and the well-being of its employees were held to have been incurred “wholly and exclusively” for the purposes of the company’s trade (*Bott E. v Price* [1987] S.T.C. 100). Remuneration paid by a company, on the advice of its accountant, to the sole shareholder and director which was found to be excessive remuneration for the work she did and to represent in part a diversification of her husband’s earnings to her fiscal purposes, was not deductible in computing the company’s tax liability, not being incurred “wholly and exclusively” for the purposes of the trade under s.30 (*Earlspring Properties v Guest*, *The Times*, May 25, 1993).

“Wholly, exclusively and necessarily in the performance of the said duties” (Income and Corporation Taxes Acts 1970 (c.10) s.189(1), 1988 (c.1) s.198(1)). Expenses

WHOLLY

incurred by a general medical practitioner in travelling from his home or his surgery to hospital, or from one hospital to another, or to attend medical seminars, were not incurred in the “performance” of his duties within the meaning of this section (*Parikh v Sleeman* [1988] S.T.C. 580). Although reading other newspapers was an integral part of a journalist’s work, expenditure on such publications was nevertheless held not to have been incurred “wholly, exclusively and necessarily” in the performance of his duties of employment for the purposes of this section (*Smith v Abbott* [1994] 1 W.L.R. 306).

See also CAPITAL.

For an extensive list of earlier authorities see Stroud’s Judicial Dictionary, 5th edn, Vol.5, 2850–285.

WHOLLY OR MAINLY. “Wholly or mainly for the purpose of carrying on a trade” (Income and Corporation Taxes Act 1988 (c.1) Sch.19 para.7). Where members of a management team borrowed money to enable them to acquire shares in a company formed by them to acquire and carry on the business of an existing company, the new company so formed was held to exist “wholly or mainly for the purpose of carrying on a trade” and was therefore a “trading company” within the meaning of the definition in para.7 (*Lord v Tustain; Same v Chapple, The Times*, May 24, 1993).

WHOLLY OWNED BY THE CROWN. Stat. Def., “(2) For the purposes of this Part a company is wholly owned by the Crown if all its shares are held by the Crown.

(3) For the purposes of subsection (2) shares are held by the Crown if they are held—

- (a) by a Minister of the Crown,
- (b) by the nominee of a Minister of the Crown, or
- (c) by a company of which all the shares are held by the Crown.” (Horserace Betting and Olympic Lottery Act 2004 (c.25) s.12(2) and (3)).

WHOLLY-OWNED SUBSIDIARY. Stat. Def., Companies Act 2006 s.1159.

WHOMSOEVER. A covenant for quiet enjoyment without interruption “by any person or persons whomsoever”, extends even to the unlawful acts of all persons therein named or comprised, but not to the unlawful acts of third persons having no title (*Woodf.* (24th edn), 628; *Touch.* 166, 170, 171).

“Any other persons whomsoever” are words extremely wide; they mean everybody, and require a very strong context to restrict them (*R. v Doubleday*, 3 E. & E. 501).

See WHOSOEVER; HEIRS WHOMSOEVER.

WHORE. A whore is a woman who practises unlawful commerce with men, particularly one that does so for hire (*Sheehey v Cokley*, 43 Iowa, 185). See hereon Ezekiel, Ch.xvi.

By Custom, and independently of Slander of Women Act 1891 (c.51), it is actionable to say in the City of London that a woman is a “whore” there, “because a whore is there to suffer the corporal punishment of carting and whipping” (*Hart v Holmes*, Cunningham, 168; see further *Robertson v Powell*, Selwyn N.P. 1259).

See BROTHEL; STREET WALKER.

WHOSE. “Whose . . . affidavit” (R.S.C. Ord.24 r.10). These words extended to an affidavit sworn by a deponent who was not a party but which was procured by and used on behalf of a party (*Dubai Bank v Galadari (No.2)* [1990] 1 W.L.R. 731).

WHOSOEVER. (Offences Against the Person Act 1861 (c.100) s.62.) The meaning of the word “whosoever” in the phrase “whosoever shall be guilty of an

assault upon a male person" could not be limited and therefore a woman could be found guilty of such an assault (*R. v Hare* [1934] 1 K.B. 354).

See WHOMSOEVER.

WHOSOEVER WILL GIVE INFORMATION. A party who had been robbed of banknotes put forth a handbill wherein it was stated that "whosoever will give information" whereby the same might be traced should, on conviction of the parties, receive a reward; held, that the only person entitled to the reward was he who first gave information by which the notes were recovered (*Lancaster v Walsh*, 7 L.J. Ex. 209; see further *Smith v Moore*, 1 C.B. 438; *Lockhart v Barnard*, 15 L.J. Ex. 1).

WIC. "A place upon the sea-shore, or upon a river" (Co. Litt. 4B).

WICKED. To say of a bishop that he is a "wicked man" is actionable (per Scroggs J., *Townsend v Hughes*, 2 Mod. 160).

WIDENING. The laying of a third track was held to be a "widening" of a railway under a railway Act, and not making, maintaining, altering or using the railway as originally constructed (*Lloyds Bank v Railway Executive* [1952] 1 T.L.R. 1207).

WIDOW. A widow is a woman who has survived a man to whom she was lawfully married, and who was his wife at the time of his death.

A woman surviving a man with whom she has gone through the ceremony of marriage, but with regard to whom she had obtained a declaration of nullity of marriage, is not his "widow" (*Re Boddington*, 22 Ch. D. 597; 25 Ch.D. 685). So, a wife divorced who survives her husband, is not his "widow" within the Statute of Distribution; *secus*, if only judicially separated (*Rolfe v Perry*, 32 L.J. Ch. 149). But a reputed wife, taking by a *designatio personæ*, may take as her reputed husband's "widow", and then that word will connote her surviving him (*Re Lowe*, 61 L.J. Ch. 415); and if the gift be to her for life she shall so long continue his "widow", that means until she shall thereafter marry: see *Re Wagstaff* [1908] 1 Ch. 162, and *Re Hammond* [1911] 2 Ch. 342, cited WIFE; but she remains the widow of her former husband if her subsequent marriage is annulled (*Re Dewhirst* [1948] Ch. 198).

A woman who had divorced her husband was held not to have qualified on his death for an interest given to her by will on her becoming a widow (*Re Norman's Will Trusts*, 84 S.J. 186); cp. *Re Slaughter* [1945] Ch. 355, cited WIFE.

"Widow" (Widows', Orphans' and Old Age Contributory Pensions Act 1925 (c.70) s.1(1); Widows', Orphans' and Old Age Contributory Pensions Act 1936 (c.33) s.1(1)) did not include a woman who was divorced from the insured man (*Colgan v Department of Health for Scotland* (1937) S.C. 16).

A widow remains a widow though she goes through the form of a marriage not allowed by law; therefore if a widow, prior to August 28, 1907, married her deceased sister's widower, she remained her first husband's widow down to that date; and though by Deceased Wife's Sister's Marriage Act 1907 (c.47) (passed on that date) her second marriage was legalised and she was no longer a widow, yet by s.2 of that Act her rights and interests as a widow were preserved to her: see *Re Whitfield* [1911] 1 Ch. 310; *Davies v Springfield* [1922] W.N. 36.

In a gift over on death of testator's "widow", the use of this word shows that the event was contemplated to happen after testator's death (*Randfield v Randfield*, 2 D.G. & J. 57; cp. *Taylor v Stainton*, 2 Jur. N.S. 634, 635).

"Widow", in a policy or in the rules of a friendly society, is not confined to the person who was wife at the time the policy was taken out or the membership

WIDOWED

commenced, any more than “children” is so limited (*Re Atkinson*, 39 S.J. 655). See further *Re Browne* [1903] 1 Ch. 188, and *Re Parker* [1906] 1 Ch. 526, both cited WIFE.

“Wherever an estate is given to a widow for life, ‘provided she shall not marry’, unless there be a devise over immediately it is merely *in terrorem*” (per Ashhurst J., *Doe v Freeman*, 1 T.R. 392, 393).

A gift to the “widows” of a place is a good charity (*Powell v Att-Gen*, 3 Mer. 48; *Att-Gen v Comber*, 2 Sim. 7 St. 93, on which last case see *Browne v King*, 17 L.R. Ir. 453, 454; *Russell v Kellett*, 26 L.T.O.S. 193; *Thompson v Corby*, 8 W.R. 267, cited SPINSTER).

A gift for the benefit of certain “widows and orphans” was held to be charitable (*Re Coulthurst* [1951] Ch. 661).

As to the effect of the use of the word “widow” in a post-nuptial settlement, see *Lort-Williams v Lort-Williams* [1951] P. 395.

“Widow or other member of the workman’s family”, under Workmen’s Compensation Act 1925 (c.84): see *Green v Premier Glynrhonwy Slate Co Ltd* [1928] 1 K.B. 561.

“Where a tenant leaves no widow” (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17) s.12(1)(g)) means no widow living (*Tinkham v Perry* [1951] 1 K.B. 547).

By remarriage a widow changes her status from widow to married woman, but she remains “the widow of the person whose death gave rise to the claim” under the Fatal Accidents Acts and therefore the discretion of the court under R.S.C. Ord.80 r.12 in respect of the control of the money continues (*Taylor v Cheltenham & Hereford Breweries* [1952] 2 Q.B. 493). On the other hand a widow who remarries may still be entitled to make a claim under these Acts (*Dietz v Lennig Chemicals* [1967] 3 W.L.R. 165).

A widow suing under the Fatal Accidents Acts is correct in showing that she sues “as widow” in the indorsement of the writ (*Stebbing v Holst & Co* [1953] 1 W.L.R. 603).

“Widow’s pension”: Stat. Def., Widows’, Orphans’ and Old Age Contributory Pensions Act 1936 (c.33) s.1(1)(a).

Stat. Def., includes a woman whose marriage to another woman ended with the other woman’s death, Marriage (Same Sex Couples) Act 2013 Sch.3; Stat. Def., “includes a woman whose marriage to another woman ended with the other woman’s death” (Marriage and Civil Partnership (Scotland) Act 2014 s.4).

See HUSBAND; NATURAL REPRESENTATIVES; WIFE.

WIDOWED MOTHER. A widow who has married again cannot be a “widowed mother” within s.35 of the Divided Parishes and Poor Law Amendment Act 1876 (c.61) (*Amersham v London*, 20 Q.B.D. 103; *Llanelly v Neath* [1893] 2 Q.B. 38; but see *Highworth v Westbury-on-Severn*, 5 T.L.R. 716). See CHILD; WIFE.

WIDOWER. See MARRIED MAN.

Finance Act 1920 (c.18) s.19: did not include a man who had been divorced from his wife (*Kliman v Winckworth*, 17 Tax Cas. 569).

Stat. Def., includes a man whose marriage to another man ended with the other man’s death, Marriage (Same Sex Couples) Act 2013 Sch.3; Stat. Def., “includes a man whose marriage to another man ended with the other man’s death” (Marriage and Civil Partnership (Scotland) Act 2014 s.4).

WIDOWHOOD. “During widowhood”: see *Rishton v Cobb*, 9 L.J. Ch. 110, cited UNMARRIED; *Re Hammond* [1911] 2 Ch. 342.

A gift “during her widowhood” to a person (correctly named but not in any way described) who had lived with the testator, but was in fact a spinster, was held to fail, for the legatee could never be the widow of the testator (*Re Gale* [1941] Ch. 209); otherwise where the beneficiary was described in the will as the testator’s wife (*Re Lynch*, 168 L.T. 189).

If a widow, being entitled to the income of a fund during her widowhood, goes through a ceremony of re-marriage which is afterwards annulled, semble her widowhood ceases on the re-marriage. At any rate, if, on the re-marriage, she allows the fund to be distributed on the footing that her widowhood has ceased, she cannot afterwards assert a claim (*Re Eaves* [1940] Ch. 102); and see *Dodsworth v Dale* [1936] 2 K.B. 503; and *Fowke v Fowke* [1938] Ch. 774; *Adams v Adams* [1941] 1 K.B. 536.

A gift “during her widowhood” to a wife who subsequently divorced the testator, but where the testator, after the divorce, confirmed the will in a codicil, was held to be good – the term “widowhood” not to be construed in its strict sense in which it does not apply to a former wife who has been divorced (*Re Carrigan* [1967] Qd. R. 379).

WIFE. Section 38 (3) of the Finance Act 1938 (c.46), which provided that the income of property voluntarily settled was to be deemed the income of the settlor if among other things it was capable of becoming applicable for the benefit of the settlor or his “wife”, did not apply if the income was capable of becoming applicable for the benefit of the settlor’s wife after his death, and in that sense “wife” did not include “widow” (*Vesteys (Lord) Executors v Inland Revenue Commissioners* [1949] 1 All E.R. 1108, overruling *Inland Revenue Commissioners v Gaunt* [1941] 1 K.B. 706).

For the purposes of the National Assistance Act 1948 (c.29) s.42(1)(a), “wife” includes the wife of a polygamous marriage (*Imam Din. v National Assistance Board* [1967] 2 Q.B. 213). But it had earlier been held that a woman domiciled in England who contracted a polygamous marriage in Egypt did not become a “wife” for the purposes of the Law Reform (Miscellaneous Provisions) Act 1949 (c.100) s.1 (*Risk v Risk* [1951] P. 50).

“Any wife who may survive the appointor” did not include a wife who had been divorced from the appointor (*Re Allan, Allan v Midland Bank Executor and Trustee Co* [1954] Ch. 295).

Gift by will “to my wife” was held to entitle a divorced wife to take (*Re Devling, Vroland v Devling* [1955] V.L.R. 238; [1955] A.L.R. 700).

“A wife (*uxor*) is a good name of purchase, without a Christian name” (Co. Litt. 3A).

A woman who is only a reputed wife may take as “wife” if, under the circumstances, that word is a clear designation of her (see *Pratt v Matthew*, 25 L.J. Ch. 409, and *Re Petts*, 29 L.J. Ch. 168, both cited MY; *Dolby v Powell*, 30 Bea. 534; see hereon *Doe d. Gains v Rouse*, 5 C.B. 422; *Re Howe*, 33 W.R. 48; *Re Horner*, 37 Ch. D. 695; *Re Harrison* [1894] 1 Ch. 561; *Re Lowe*, 61 L.J. Ch. 415; *Re Plant*, 47 W.R. 183; *Anderson v Berkley* [1902] 1 Ch. 936; *Re Wagstaff* [1908] 1 Ch. 162; *Re Hammond* [1911] 2 Ch. 342; *Re Wagstaff* was applied in *Re Smalley* [1929] 2 Ch. 112; HUSBAND); but in a bequest to A for life, remainder to his “wife” (without more), that must almost always mean A’s lawful wife; for A may marry after the testator’s death,

and then there would be a person exactly answering the description of A's wife (*Re Davenport*, 20 L.T.O.S. 165). See further RELATIONS.

Even an intended wife may take under a bequest to the testator's "wife" if that word, under the circumstances, is a clear designation of her (*Schloss v Stiebel*, 6 Sim. 1).

Bequest to a wife whilst living apart from her husband: see *Re Moore etc.*, 39 Ch. D. 116, cited DURING. For further examples of construction of the word "wife" in a will, see *Re Bleckly* [1920] 1 Ch. 450; *Re Hardyman* [1925] 1 Ch. 287.

A wife is not included in a gift to a person's "family" (*Re Hutchinson and Tennant*, 8 Ch. D. 540), or "relations", or "next-of-kin" (*Nicholls v Savage*, cited 18 Ves. 53). BUT see NEAR RELATIONS.

A bequest to wife "for her own and the children's benefit", she not to diminish principal: see *Hart v Tribe*, 23 L.J. Ch. 462.

A stipendiary magistrate has held that a deceased wife's sister (who has gone through the ceremony of marriage with the husband) and her children, may be recognised as the "wife" and "children" of the man as a member of a friendly society (*Corner v Oddfellows Society*, 46 J.P. 809).

A common law wife is one who is married by a union which though informal was recognised as valid by the common law (*Blanchett v Hansell* [1943] 3 W.W.R. 275).

In a family provision providing for a named nephew, his wife and his children, the word "wife" was not presumed to refer to the beneficiary's wife at the date of the will (*Burns' Trustees* (1961) S.C. 17).

"Wife... of the deceased" (Inheritance (Provision for Family and Defendants) Act 1975 (c.63) s.1(1)(a)). The first wife of the deceased, who left all his estate to his second wife, was a "wife of the deceased" within the meaning of this section and therefore entitled to make a claim despite the fact that the marriage was polygamous (*Re Sehota, Decd.* [1978] 1 W.L.R. 1506).

"Wife's trust fund": see *Re Rydon's Settlement, Barclays Bank v Everitt* [1955] 1 Ch. 1.

"Wives" (Immigration Act 1971 (c.77) s.1(5)) cannot be construed as "husbands" for the purposes of this section. Accordingly, the husband of a Commonwealth citizen who was settled in the United Kingdom when the Act came into force could not rely on the provisions of this section to defeat removal directions made against him by the Home Secretary (*Singh (Bahadur) v Immigration Appeal Tribunal* [1988] Imm.A.R. 582).

"Wife living with him or... wholly maintained by him" (Income and Corporation Taxes Act 1970 (c.10) s.8(1)(a)). For the purposes of this section a "wife" is someone who has entered into a lawful marriage with a particular man, and does not include a so-called common law wife, however close or permanent the cohabitation might be (*Rignell v Andrews* [1990] S.T.C. 410).

The Court of Appeal declined to construe "wife" as including an unmarried partner in s.80(3) of the Police and Criminal Evidence Act 1984 (non-compellable witnesses) (*R. v Pearce (Gary James)* [2002] 1 W.L.R. 1553, CA).

Bequest to wife has no priority: see IMMEDIATELY.

See JOINT TENANCY.

Stat. Def., Immigration Act 1971 (c.77) s.5(4); Mental Health Act 1983 (c.20) s.26(6); Registered Homes Act 1984 (c.23) s.19(3).

Stat. Def., includes a woman who is married to another woman, Marriage (Same Sex Couples) Act 2013 Sch.3.

See CHILDREN OF THE WIFE; COHABITATION; FEME; HUSBAND; NECESSARIES; WIDOW; BELOVED WIFE; RELATIONS; THEIR; COHABITATION.

WIKE. In Essex, a farm (Co. Litt. 5A); “wyke”, a farm or little village” (Cowel).

WILD ANIMAL. See FERÆ NATURÆ: 2 Bl. Com. 390 et seq.

Stat. Def., Wildlife and Countryside Act 1981 (c.69) s.27.

WILD BIRD. “Wild bird” (Protection of Birds Act 1954 (c.30) s.14(1)). A prosecution under this Act for possessing a kestrel chick, the progeny of a tame female and a wild male, failed because the justices were not satisfied that the chick was a “wild bird” within the meaning of this section. On appeal the Divisional Court held that it must be a question of fact whether a particular bird is a “wild bird” because wildness is not an inherent attribute of a particular species but an attribute that can be lost (*Robinson v Kenworthy*, *The Times*, May 13, 1982).

Stat. Def., Wildlife and Countryside Act 1981 (c.69) s.27.

See DEAD WILD BIRD.

WILD MAMMAL. Stat. Def., Hunting Act 2004 (c.37) s.11. See MAMMAL.

WILD PLANT. Stat. Def., Wildlife and Countryside Act 1981 (c.69) s.27.

WILDFOWL. By “wildfowl”, “pheasants and partridges are not understood, for they are fowl of warren (Manwood, cap. 4, s.3 (4th edn), 363; F.N.B. 86; Rastal, 585). Wildfowl are known in the law, and described by the Wild-fowl Act 1533 (c.11), which doth take notice of wildfowl. The title of the statute is ‘against destroying of wildfowl’. It recites that there hath been within this realm great quantities of wildfowl, as ducks, mallards, wigeons, teals, wildgeese, and divers other kind of wildfowl, which is reasonable to be understood of that sort that do get their prey in that manner. The statute of Wild Fowl Act 1549 (c.7), which repeals that of 1533, takes notice of wildfowl, and hath the general word ‘wildfowl’, without coming to particulars. Therefore, when the declaration is of ‘wildfowl’, it is not to be understood that sparrows, wrens, or robin redbreasts, can be thereby included” (per Holt C.J., *Keeble v Hickeringill*, 11 East, 574, 577). See FOWL.

WILFUL. “Wilful is a word of familiar use in every branch of law, and although in some branches of law it may have a special meaning, it generally, as used in courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent” (per Bowen L.J., *Re Young and Harston*, 31 Ch. D. 174; see further *Elliott v Turner*, 13 Sim. 485).

Does not necessarily connote blame, although the word is more commonly used of bad conduct than of good (*Wheeler v New Merton Board Mills* [1933] 2 K.B. 669).

“If a man permits a thing to be done, it means that he gives permission for it to be done, and if a man gives permission for a thing to be done, he knows what is to be done or is being done, and, if he knows that, it follows that it is wilful” (per Lord Goddard C.J., in *Lomas v Peck* [1947] 2 All E.R. 574, 575).

Whatever is intentional is wilful (per Day J., *Gayford v Chouler* [1898] 1 Q.B. 316, cited WILFUL AND MALICIOUS).

“Wilful”, in Vagrancy Act 1824 (c.83) s.3: see *Lewisham Guardians v Nice*, 93 L.J.K.B. 469.

“Wilful default . . . by or on behalf of any person” (Taxes Management Act 1970 (c.9) s.36). Professional accountants employed by a taxpayer could commit “wilful default” on his “behalf” notwithstanding that the taxpayer himself was unaware of any misleading information in his tax return (*Pleasants v Atkinson* [1987] S.T.C. 728).

To sustain a finding of “wilful default or culpable neglect” within the meaning of the Community Charges (Administration and Enforcement) Regulations 1989 (SI 1989/438), it is necessary at least for there to be evidence that the non-payer has been offered employment which he has then rejected or refused (*R. v Poole Magistrates, Ex p. Benham; Benham v Poole BC* [1991] R.V.R. 217).

“Wilful exposure to needless peril”: an exclusion clause in these terms in a personal accident insurance policy could only be relied on in cases where either it could be shown that an insured injury was quite likely to occur or that the insured person clearly appreciated the risk of the injury occurring. A merely negligent or reckless act by the insured person did not fall within the exception clause (*Morley v United Friendly Insurance, The Times*, February 8, 1993).

“Wilfully disturbs any spawn” (Salmon and Freshwater Fisheries Act 1975 (c.51) s.2(4)). A riparian owner who caused gravel to be removed from the river bank in an area where spawning fish were to be found, and then caused lorries to cross, was guilty of an offence under this section (*National Rivers Authority v Jones (John L.)* [1992] C.O.D. 351).

(Highways Act 1980 (c.66) s.137.) “Wilfully” meant intentionally as opposed to accidentally (*Kent CC v Upchurch River Valley Golf Course Ltd* [1998] 3 C.L. 347).

“Wilful” ill-treatment requires deliberate or intentional conduct. ‘Wilful’, as it is ordinarily understood in the context of the mental element in crimes, involves intention. Notwithstanding the origins of the statutory offence in legislation generally applicable throughout the United Kingdom, there is nothing to suggest that Parliament intended to restrict the common law position in Scotland. The pre-existing common law offences of child cruelty, loosely defined, paid little, if any, regard to either the motives or the state of mind of the perpetrator who put his child at risk or in danger, or caused the child to suffer injury. The relevant issue was whether harm would be likely to, or inevitably, arise from the deliberate act or omission in question.” (*M v Locality Reporter, Glasgow* [2015] ScotCS CSIH_58.)

See WILFULLY; see FURTHER SERIOUS.

WILFUL ACT. “Wilful act, default, or neglect” of an innkeeper, or his servant, which deprived him of the protection as against a claim by a guest, given by s.1 of the Innkeepers Liability Act 1863 (c.41): see *Medawar v Grand Hotel Co* [1891] 2 Q.B. 11; in this phrase “wilful” was only to be read with “act”, and not also with “default or neglect” (per Byles J., *Squire v Wheeler*, 16 L.T. 93); see also *Whitehouse v Pickett*, 77 L.J.P.C. 96; *Behrens v Grenville Hotel*, 69 S.J. 346; *Cryan v Hotel Rembrandt*, 133 L.T. 395; *Bellville v Palatine Hotel & Buildings Co*, 171 L.T. 363. Cp. *Carpenter v Mason*, 4 P. & D. 439, cited WILFUL WASTE. As to what was such “default” or “neglect”, see per Murphy J., *O'Connor v Grand International Hotel Co* [1898] 2 I.R. 96.

See WILFUL DEFAULT. Cp. EXPRESSLY FOR SAFE CUSTODY.

WILFUL AND MALICIOUS. In the power which a judge had to give costs to a plaintiff recovering less than 40s. damages, if certificate given “that the trespass or grievance in respect of which the action was brought was *wilful and malicious*” (Costs in Action of Trespass Act 1840 (c.24) s.2); the words italicised imported personal

malice and ill-will to the plaintiff, as distinguished from that legal malice which is essential to sustain an action for libel (*Foster v Pointer*, 10 L.J. Ex. 454).

“Whoever shall wilfully OR maliciously commit any damage, injury or spoil to, or upon, any real or personal property whatsoever” (Malicious Damage Act 1861 (c.97) s.52; see Criminal Damage Act 1971 (c.48) s.1, where the words are omitted); to constitute this offence there had to be some actual damage to the property itself; merely gathering mushrooms growing in a wild state in a field was not such damage to the field (*Gardner v Mansbridge*, 19 Q.B.D. 217, in which case the court observed that the words are disjunctive), but a small damage sufficed, e.g. to the extent of 6d. by walking across a grass field (*Gayford v Chouler* [1898] 1 Q.B. 316). Where a milk-carrier, having accidentally spilt some of the milk that he was taking on his round, added water to conceal the loss, it was held that there was no offence within this section, for there was an absence of mens rea to do damage to anybody, and least of all to the master who was prosecuting (*Hall v Richardson*, 6 T.L.R. 71); but that case was overruled by *Roper v Knott* ([1898] 1 Q.B. 868), where the milk-carrier fraudulently added water to the milk to increase the bulk and himself get the additional price. In *Roper v Knott* the court held that the motive in the mind of the milk-carrier was immaterial, because the words are “wilfully ‘or’ maliciously”, and therefore if the act be “wilful” only, the offence is committed, for “a man does a thing wilfully, (1) if he does the act which causes damage to property with the intention of causing the damage, or (2) knowing that the consequences of the act he does will be to cause the damage”, and “an offence is committed against the statute if there be wilful damage to the thing, although it does not cause loss to the owner of the thing” (per Russell C.J., *Roper*). A claim of right would not have taken a case of damage out of this section, if the claim was not a reasonable one, of which the justices were to judge (*White v Feast*, L.R. 7 Q.B. 353; but see on this case *Denny v Thwaites*, 2 Ex. D. 21). See REAL OR PERSONAL PROPERTY. Cp. UNLAWFULLY.

See MALICE; MALICE AFORETHOUGHT.

WILFUL BREACH. Where a person is charged with an offence under s.21 of the Town Police Clauses Act 1847 (c.89), which make “every wilful breach” of an order an offence, the information was bad if it omitted the word “wilfully” (*Waring v Wheatley* [1951] W.N. 569).

WILFUL DAMAGE. Stat. Def., Merchant Shipping Act 1894 (c.60) s.376(1)(h).

WILFUL DEFAULT. “Wilful default of the person in charge” of a ship (Merchant Shipping Act 1854 (c.104) s.299; Merchant Shipping Act 1894 (c.60) s.419(3)) means “by the fault” of such person, whether intentional or negligent, and especially so in view of s.29 of the Act of 1862 (c.63) (*Grill v General Screw Collier Co*, L.R. 1 C.P. 600; 3 C.P. 476, especially judgment of Willes J.; see hereon Merchant Shipping Act 1894 (c.60) s.419(4), on which see *The Koenig Wilhelm I* [1903] P. 114; see Maritime Conventions Act 1911 (c.57) s.4; *The Enterprise* [1912] P. 207). A master was not guilty of “wilful default” within the meaning of s.419(2) of the 1894 Act if, at the time of the collision he had no personal knowledge of the infringement of the collision regulations, he was not present on the bridge, and the ship was being navigated by a duly certificated officer of the watch (*Bradshaw v Ewart-James* [1983] 1 All E.R. 12). Cp. WILFUL NEGLECT.

Wilful default by a trustee is the wilfully not doing something which he ought to do, as distinguished from doing something which he ought not to do; cp. BREACH OF TRUST. See hereon Lewin (15th edn), 740 et seq.; Godefroi, 789; Seton, 1157–1166;

WILFUL

R.S.C. Ord.33 r.2; *Re Stevens* [1898] 1 Ch. 162. See further *Carruthers v Cairns*, 27 Sc. L.R. 640, especially judgment of Inglis, L.P.

A trustee's error of judgment as to the honesty of a solicitor employed by him in the administration of the trust does not amount to wilful default within s.30(1) of the Trustee Act 1925 (c.19). The use of those words in that section implies either a consciousness of negligence or breach of duty or recklessness in the performance of a duty (*Re Vickery* [1931] 1 Ch. 572).

"Wilful default of the vendor", in conditions of sale, means the not doing what is reasonable under the circumstances, with the knowledge that the omission will probably cause delay (per Bowen L.J., *Re Young and Harston*, 31 Ch. D. 174, cited WILFUL; *Re Hetling and Merton* [1893] 3 Ch. 269; *Re Pelley and Jacob*, 80 L.T. 45; *Re London and Tubbs* [1894] 2 Ch. 524, in which last case Lindley L.J., said, "To make up one's mind not to verify a statement is 'wilful'; but simply not to think about verifying it is not 'wilful'"). Delay by a not unreasonable repudiation of the contract (*North v Percival* [1898] 2 Ch. 128), or by a difficulty in establishing the title (*Williams v Glenton*, 1 Ch. 200), or, semble, even by a mistake by the vendor as to his rights if it be bona fide (*Bennett v Stone* [1902] 1 Ch. 226; 1903, 1 Ch. 509), is not occasioned by a "wilful default". See further *Re Wilson and Stephens* [1894] 3 Ch. 546; *Smith v Wallace* [1895] 1 Ch. 385; *Re Strafford to Maples* [1896] 1 Ch. 235; *Re Woods and Lewis* [1898] 2 Ch. 211, cited DEFAULT; Sug. V. & P. 638.

See DEFAULT; NEGLIGENCE; WILFULLY. Cp. WILFUL MISCONDUCT. See further MAKING DEFAULT.

WILFUL DELAY. Delaying the delivery of a declaration, in an action for bribery, for eleven months; held, that there was "wilful delay" in proceeding with the action, within s.14 of the Corrupt Practices Prevention Act 1854 (c.102), although delivered within the time then allowed by law, and although plaintiff alleged that he could not sooner acquire the evidence and information necessary to allege the specific charges in the declaration (*Taylor v Vergette*, 30 L.J. Ex. 400). In that case, Martin B. said "'Wilful delay' does not mean 'perverse delay', but delay which the plaintiff cannot account for to the satisfaction of the court" (7 H. & N. 147). See further *Guest v Caldicott*, 45 L.T. 609. Cp. DUE DILIGENCE; PROSECUTE.

See further WILFUL DEFAULT para.(4).

WILFUL DESTRUCTION. See DESTRUCTION.

WILFUL DISOBEDIENCE. The wilful disobedience of a seaman or apprentice (Merchant Shipping Act 1894 (c.60) Pt 4 (Fishing Boats) s.376(1)(d)) is "wilfully disobeying any lawful command DURING the engagement": "There may be many cases in which desertion, or absence without leave, would not amount to wilful disobedience, and in these cases the seaman would only be liable to the lesser penalty. Where, however, the seaman deserts or is intentionally absent without leave after the time at which he has been lawfully ordered to be on board, his desertion or absence may amount to 'wilful disobedience', and, consequently, that he would be liable to imprisonment. The words 'during the engagement' seems to suggest that the contract between the employer and the employed should be taken into account, and that if, having regard to that contract, the order was one which the employed was bound to obey, his disobedience might be dealt with under clause (d)"; a construction which is very much assisted by subs.(5) (per Alverstone C.J., *Edgill v Alward* [1902] 2 K.B. 239). Where there is lawful cause for leaving a ship there is not wilful disobedience (*Silbery v Connelly*, 94 L.T. 198). Cp. *Whitehead v Reader* [1901] 2 K.B. 48, cited

EMPLOYMENT. See CONTINUED BREACH OF DUTY. "Wilful disobedience to a lawful command", within s.225(1): see *O'Reilly v Dryman*, 85 L.J.K.B. 492, where it was held that an unreasonable demand, as, e.g. to go to sea without a sufficient crew, is not wilful disobedience to a lawful command.

The "wilful" disobedience by a corporation of a judgment or order made under the old R.S.C. Ord.42 r.31 (Ord.45 r.5, which replaces it omits the word "wilful") meant disobedience which could not be excused as casual, accidental or unintentional: see *Stancomb v Trowbridge Urban DC* [1910] 2 Ch. 190. It did not entail obstinacy of an obstructive kind; it meant an intentional disobedience (*Att-Gen v Walthamstow*, 11 T.L.R. 533). For disobedience to be "wilful" within this rule it had to be more than casual, accidental or unintentional. It had to be contumacious, that is deliberate in any ordinary sense of obstinacy or rebellion (*Worthington v Ad-Lib Club* [1965] Ch. 236).

WILFUL INSULT. To interrupt a county court judge whilst giving judgment by saying, "That is a most unjust remark", was a "wilful insult" to the judge within s.162 of the County Courts Act 1888 (c.43) (*R. v Jordan*, 57 L.J.Q.B. 483).

WILFUL INTERFERENCE. "Wilfully interfere with or misuse" (Factories Act 1937 (c.67) s.119(1), now Factories Act 1961 (c.34) s.143(1)) means interference which is in the nature of a perverse meddling and does not merely mean an intentional interference (*Charles v Smith & Sons (England)* [1954] 1 W.L.R. 451).

WILFUL MISCONDUCT. Wrong conduct, wilful in the sense of being intended, but induced by mere honest forgetfulness or genuine mistake, does not amount to "wilful misconduct" (see judgment of Grove J., *Gordon v Great Western Railway*, 8 Q.B.D. 44). "What is meant by 'wilful misconduct' is misconduct to which the will is a party; it is something opposed to accidental or negligent; the 'mis' part of it, not the conduct, must be wilful" (per Bramwell L.J., *Lewis v Great Western Railway*, 3 Q.B.D. 195); see further *Stevens v Great Western Railway*, 3 Q.B.D. 195; see further *Stevens v Great Western Railway*, 52 L.T. 324; *Spittle v Great Western Railway*, 2 T.L.R. 618; *Haynes v Great Western Railway*, 41 L.T. 436. Cp. "Wilful misbehaviour", Highways Act 1835 (c.50) s.78; WILFUL DEFAULT; WILFUL NEGLIGENCE; MISCONDUCT; SERIOUS.

The effect of *Lewis v Great Western Railway* (above) was "very effectively paraphrased" by Johnson J. in *Graham v Belfast & Northern Counties Railway* ([1901] 2 Ir. R. 19), where he says, "wilful misconduct" in a special condition relating to a contract of carriage at owner's risk, "means misconduct to which the 'will' is party, as contra-distinguished from accident, and is far beyond any negligence, even gross or culpable negligence, and involves that a person wilfully misconducts himself who knows and appreciates that it is wrong conduct on his part in the existing circumstances to do, or to fail or omit to do (as the case may be), a particular thing, and yet intentionally does, or fails or omits to do it, or persists in the act, failure, or omission, regardless of consequences"—to which should be added, "or acts with reckless carelessness, not caring what the results of his carelessness may be" (per Alverstone C.J., *Forder v Great Western Railway* [1905] 2 K.B. 535 at 536). In this case "wilful misconduct" was negatived; see also *Cordey v Cardiff Pure Ice Co*, 88 L.T. 192. It should be noted that in *Bastable v North British Railway* (1912) S.C. 555, the Lord President expressly doubted the dicta in *Lewis v Great Western Railway* and *Graham v Belfast & Northern Counties Railway* to the effect that wilful misconduct is something more than and opposed to negligence; but it was found in *Hoare v Great Western Railway*, 37 L.T. 186, "a striking illustration of how very near the line cases

may go". The onus of proving wilful misconduct will generally be on the plaintiff (see per Kennedy J., *Forder v Great Western Railway* and per Johnson J., *Graham v Belfast & Northern Counties Railway* (above)). See further *Buckton & Co v London & North Western Railway*, 87 L.J.K.B. 234, where the definitions laid down in *Lewis v Great Western Railway* and *Forder v Great Western Railway* were applied. See also *Smith Ltd v Great Western Railway* [1922] 1 A.C. 178, distinguishing *Curran v Midland Railway* [1896] 2 Ir. R. 183; *Metropolitan Water Board v London & North Eastern Railway*, 22 L.G.R. 383. Railway servants were guilty of "wilful misconduct" in refusing to handle certain goods (*W Young & Son (Wholesale Fish Merchants) v British Transport Commission* [1955] 2 Q.B. 177). See further SERIOUS.

(Carriage by Air Act 1932 (c.36) Sch.I art.25.) In order to establish wilful misconduct a plaintiff had to satisfy the court that the person who did the act knew at the time that he was doing something wrong and yet did it notwithstanding, or alternatively, that he did it quite recklessly, not caring whether he did the right thing or the wrong thing, quite regardless of the effects of what he was doing on the safety of the aircraft and of the passengers for which and for whom he was responsible (*Horabin v British Overseas Airways Corp* [1952] 2 All E.R. 1016).

"Wilful misconduct" (Offences against the Person Act 1861 (c.100) s.35). All that is necessary to prove that any conduct is "wilful" is to show that the accused was in fact doing what he intended to do (*R. v Cooke (Philip)* [1971] Crim. L.R. 44).

"Wilful misconduct" under s.161(4)(b) of the Local Government Act 1972 (c.70) means deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not (*Graham v Teesdale* (1983) 81 L.G.R. 117).

What amounts to wilful misconduct for the purposes of s.20 of the Local Government Finance Act 1982 (audit of local authority accounts) is discussed at length in *Porter v Magill* [2002] 1 All E.R. 465, HL. In particular, it appears that the misconduct has to be deliberate and knowing.

WILFUL NEGLIGENCE. To "wilfully neglect to do a thing" is intentionally or purposely to omit to do it (per Mellor J., *R. v Downes*, 1 Q.B.D. 25. below; see WILFUL); and therefore to pray, instead of sending for a doctor, was to "wilfully neglect" to provide medical aid within s.37 of the Poor Law Amendment Act 1868 (c.122) (*R. v Downes*, 1 Q.B.D. 25; *R. v Senior* [1879] 1 Q.B. 283; see further *R. v Morby*, 8 Q.B.D. 571).

"Wilful neglect" by a husband "to provide reasonable maintenance" for wife or her infant children (Summary Jurisdiction (Married Women) Act 1895 (c.39) s.4; Matrimonial Proceedings (Magistrates' Courts) Act 1960 (c.48) s.1(1)(h)) necessarily involves an inquiry as to the husband's means, or his capability of earning means (*Earnshaw v Earnshaw* [1896] P. 160, on which see *Nott v Nott* [1901] P. 241, cited MEANS). Wilfully means deliberately (*National Assistance Board v Prisk* [1954] 1 W.L.R. 443). A delusive belief in facts which, if true, would justify non-cohabitation, is a defence to a complaint of desertion, but not necessarily to one of wilful neglect to maintain (*Brannan v Brannan* [1973] 2 W.L.R. 7). See DESERTION; IDLE AND DISORDERLY PERSON; NEGLIGENCE; PERSISTENT.

Where a husband and wife had parted for many years, and then the husband called at the wife's house and resumed cohabitation for two or three days, about two months after which the wife went to the husband's house and asked for admission, but the husband sent her away saying, "Get thee home, and never come here again: go and

drown thyself"; held, that he was guilty of wilful neglect, causing his wife "to leave and live separately and apart from him" within Summary Jurisdiction (Married Women) Act 1895 (c.39) s.4 (*Snape v Snape*, 64 J.P. 793); but how can a wife 'leave' a home that she has relinquished and to which she has not been re-admitted?

So, the essence of the offence of "wilfully refusing or neglecting" to maintain one's family (Vagrancy Act 1824 (c.83) s.3) is the mens rea; therefore, there is no such offence where a husband gives a wife a bona fide offer to return to his home (*Flannagan v Bishopwearmouth*, 27 L.J.M.C. 46), or where he refuses to maintain her because he really believes, and has grounds for believing, her to be unchaste (*Morris v Edmonds*, 77 L.T. 56). See DESERTION.

So, if a man is offered work the remuneration for which would make him able to maintain himself, and he refuses the work (and so becomes parochially chargeable) because it is clogged with conditions, e.g. Salvation Army rules, which have no relation to the work or the wages offered for it, he is not guilty of "wilfully refusing or neglecting" to maintain himself, within s.3 of the Vagrancy Act 1824 (c.83) (*Poplar v Martin* [1905] 1 K.B. 728). Cp. IDLE AND DISORDERLY PERSON; *Lewisham v Nice* [1924] 1 K.B. 618.

"Wilfully . . . neglects" (Children and Young Persons Act 1933 (c.12) s.1(1)) means deliberate and not merely inadvertent neglect. A person might not foresee the possible consequences of failing to call a doctor, but such failure would be deliberate and therefore "wilful" within the meaning of this section (*R. v Lowe* [1973] 1 Q.B. 702). For earlier cases see *R. v Connor* [1908] 2 K.B. 26; *Cole v Pendleton*, 60 J.P. 359; *Oakey v Jackson* [1914] 1 K.B. 216. The House of Lords, by a majority of three to two, overturned previous decisions by holding that the offence under this section of "wilfully" neglecting a child in a manner likely to cause him unnecessary suffering or injury to health, was not an absolute offence; that if the jury were satisfied that the child did in fact need medical aid at the relevant time, the mens rea necessary to establish the charge against a parent or custodian was either that such person was aware at the relevant time that the child's health might be at risk if it did not receive medical aid, or that the parent's unawareness of that fact was due to his not caring whether his child's health was at risk or not (*R. v Sheppard* [1980] 3 W.L.R. 961).

A farmer who drove his tractor into the path of a train was guilty of obstruction by "wilful neglect" within the meaning of s.36 of the Malicious Damage Act 1861 (c.97) (*R. v Gittins* [1982] R.T.R. 363).

"Wilful neglect or default" for the meaning of these words in a company's articles of association, see *Re City Equitable Fire Insurance Co Ltd* [1925] 1 Ch. 407; *Re Munton* [1927] Ch. 262; *Re City of London Insurance Co*, 41 T.L.R. 521.

Where steps are taken which are considered adequate to protect warehoused goods from rats and they, in fact, turn out to be totally ineffective, there is no "wilful neglect" within the terms of the contract of bail (*Kenyon, Son & Craven v Baxter Hoare & Co* [1971] 1 W.L.R. 519).

Wilful neglect denotes an intentional or purposive omission by a person to do something that he knows he has a duty to do (*De Maroussem v Commissioner of Income Tax* [2004] 1 W.L.R. 2865, PC).

As to what is "wilful neglect or default of the vendor", in conditions of sale: see WILFUL DEFAULT.

"Wilful neglect or misconduct" conducing to adultery: see CONDUCE. Cp. WILFUL MISCONDUCT.

Cp. NEGLECT; OBSTRUCT; WILFUL ACT; WILFUL DEFAULT.

WILFUL REFUSAL. In *Francis v Steward* (5 Q.B. 998), Denman C.J., said that "wilful" added nothing to "refusal", for, he added, "all refusal is wilful". But it is submitted that a "wilful refusal" is a refusal without adequate cause; therefore, a trustee had not "wilfully refused" to convey trust lands within s.2 of the Trustee Act 1852 (c.55) (see Trustee Act 1893 (c.53) s.26(vi)), when his refusal to do so was based on a bona fide doubt as to the right of the requesting person (*Re Mills*, 40 Ch. D. 14). See now Trustee Act 1925 (c.19) s.44.

A "wilful refusal" to receive money payable by the promoters of an undertaking on entering lands (Lands Clauses Consolidation Act 1845 (c.18) s.88) meant "a refusal arising from an exercise of mere will or caprice, and not from the exercise of reason" (per Kindersley V.C., *Re Ryde Commissioners*, 26 L.J., Ch. 299, citing and applying *Ex p. Bradshaw*, 17 L.J. Ch. 454, and *Re Windsor, etc. Railway*, 12 Bea. 522).

The phrase cannot apply to an official trustee of charity lands in whom the legal estate is vested and who (if required) is ordered to concur in the conveyance to the promoters, for he is not bound to receive the purchase or compensation money (*Re Leeds Grammar School* [1901] 1 Ch. 228).

Wilful and persistent refusal to allow marital intercourse is not of itself sufficient ground for a decree of nullity of marriage: see *Napier v Napier* [1915] P. 184.

"Wilful refusal to consummate" (Matrimonial Causes Act 1937 (c.57) s.7(1)(a); see Matrimonial Causes Act 1973 (c.18) s.12) connotes a settled and definite decision come to without just excuse (*Horton v Horton* [1947] 2 All E.R. 871).

See REFUSAL; WILFUL NEGLECT.

WILFUL WASTE. a tenant for life, sans waste, "further than wilful waste", is entitled to the interest of money produced by sale of decaying timber cut by order of the court (*Wickham v Wickham*, 19 Ves. 419).

In the phrase "purloin, embezzle, or wilfully waste or misapply" property (Poor Law Amendment Act 1834 (c.76) s.97), "wilfully" applies to "misapply" as well as to "waste" (*Carpenter v Mason*, 4 P. & D. 439). Therefore, this offence of "misapplying" is not properly stated without the addition of "wilfully"; for though, probably, "misapply" imports fault, e.g. negligence, yet it does not, of itself, import wilfulness (*Carpenter*). Cp. *Squire v Wheeler*, 16 L.T. 93, cited WILFUL DEFAULT.

See WASTE; WITHOUT IMPEACHMENT OF WASTE.

WILFULLY. It has been said that the legal meaning of "wilfully" is purposely without reference to bona fides or collusion (argument of counsel in *Hutchinson v Manchester, Bury & Rossendale Railway*, 15 L.J. Ex. 295, citing *R. v Price*, 9 L.J.M.C. 49). "'Wilfully' means deliberately and intentionally" (per Russell C.J., *R. v Senior* [1899] 1 Q.B. 283, cited WILFUL NEGLECT). So, "wilful" disobedience of a judgment or order made under the old R.S.C. Ord.42 r.31 (Ord.45 r.5, which replaces it, omits the word "wilful"), did not involve obstinacy of an obstructive kind; it meant an intentional disobedience (*Att-Gen v Walthamstow*, 11 T.L.R. 533). See UNLAWFULLY.

But "'wilfully' was used in s.79, Metropolitan Buildings Act 1844 (c.84), in a sense denoting 'evil intention', and such is the common use of the word in the English language. Thus Milton—

'Thou to me
Art all things under heav'n, all places thou,
Who for my "wilful" crime art banish'd hence'.

And Hooker says, "So full of wilfulness and self-seeking is our nature" (per Campbell C.J., *R. v Badger*, 25 L.J.M.C. 90); and it was held in that case that a surveyor was not guilty of the offence of "wilfully receiving" a higher fee than he was entitled to, when acting under an honest mistake. See also *Smith v Barnham*, 1 Ex. D. 419, where the words were "shall wilfully throw any soil into" certain rivers, on which Bramwell B. said, "'wilfully' appears to me in this section to mean 'wantonly' or 'causelessly'"; but see per Kennedy J., *High Wycombe v Thames Conservators*, 78 L.T. 463, cited WILFULLY SUFFER.

The effect of omitting such words as "knowingly" or "wilfully" from a statute replacing an earlier statute may be only to alter the burden of proof (*Harding v Price* [1948] 1 K.B. 695).

Where a statutory offence is for something "wilfully" done or omitted, that word should always be employed in the indictment; thus if the offence be for "wilfully and maliciously" doing anything, the indictment will be bad if it charges that the act was "unlawfully and maliciously" done, for a thing may be "unlawfully" done without wilfulness, and "maliciously" does not include "wilfully" where both words are made part of the offence (*R. v Davis*, 1 Leach (4th edn), 493). So, an indictment under s.34 of the Municipal Corporations Act 1835 (c.76), which charged that the defendant "falsely and fraudulently" answered the prescribed questions on applying to vote, did not sufficiently state that he had "wilfully" made "false answer", which is the offence defined by the section (*R. v Bent*, 1 Den 157). But on *R. v Davis*, see *Note*, 43 L.J.M.C. 94; *R. v Pembliton*, L.R. 2 C.C.R. 122, cited MALICE. Cp. UNLAWFULLY.

The use of word "wilfully" in the description of a statutory offence implies also "knowingly", in that the accused must have the intention to commit the specific crime for which he is charged (*R. v Piche* (1967), 10 Cr. L.Q. 107).

"Wilfully" break a street lamp (Metropolis Management Act 1855 (c.120) s.206): see *Burgess v Morris*, 77 L.T. 97, cited CARELESSLY.

Fraud "wilfully committed in using" a weighing machine (Weights and Measures Act 1878 (c.49) s.26) was, semble, not committed if the purchaser really knew and approved of what was being done (per Alverstone C.J., *King v Spencer*, 2 L.G.R. 984, cited also UNJUST; *Harris v Allwood*, 57 J.P. 7). See further *Stone v Tyler* [1905] 1 K.B. 290, cited USING.

Lessee's covenant not to "wilfully do or suffer" anything to hinder or prevent the renewal of a licence: see *Bryant v Hancock* [1899] A.C. 442; and see thereon per Ridley J., *Mumford v Walker*, 71 L.J.K.B. 19, cited ASSIGNS, and per Collins M.R., *Wilson v Twamley* [1904] 2 K.B. 104, 105, which observations were applied in *Palethorpe v Home Brewery Co* [1904] 2 K.B. 5, cited KEEP. See further PERMIT; SUFFER; *Atkin v Rose*, 92 L.J. Ch. 209.

"Wilfully or negligently" (Road Traffic Act 1960 (c.16) s.134(3)) failing to comply with the conditions of a licence is one single offence; therefore, a charge of wilfully and negligently failing to comply is not bad for duplicity (*Newton v Smith; Standerwick v Smith* [1962] 2 Q.B. 278).

Wilfully pretending to be a solicitor means "deliberately" pretending (*Hall v Jordan* [1947] 1 All E.R. 826).

"Wilfully" (Perjury Act 1911 (c.6) s.1(1)) merely means deliberately and not inadvertently or by mistake. It is not necessary for the prosecution to prove that the accused knew or believed the false statement to be material to the proceedings (*R. v Millward (Neil)* [1985] 2 W.L.R. 532).

WILFULLY

“Wilfully obstructs”: see OBSTRUCT.

“Wilfully assaults, ill-treats, neglects, abandons or exposes”: see ILL-TREAT.

“Wilfully interrupts”: see INTERRUPT.

See WILFUL; WILFUL AND MALICIOUS; WILFULLY AND FALSELY; cp. WILFULLY SUFFER; WILFULLY TRESPASS; KNOWINGLY; WILLINGLY. See further UNLAWFULLY; WILFUL NEGLECT; WILFUL REFUSAL; WILFULLY INTERRUPT; WITHHOLD.

WILFULLY AND FALSELY. “Wilfully and falsely” means wilful falsity, not mere incorrectness (*Ellis v Kelly*, 30 L.J.M.C. 35). That case was on s.40 of the Medical Act 1858 (c.90), which imposed a penalty for “wilfully and falsely” pretending to a medical title; and Pollock C.B. there said: “Now ‘wilfully’ cannot here mean merely ‘intentionally’, as opposed to ‘accidentally’ (which is the meaning it sometimes has), for a man cannot accidentally call himself a Doctor of Medicine; and therefore the section must be read as pointing to wilful falsity”. See hereon *Andrews v Styrap*, 26 L.T. 704; *Carpenter v Hamilton*, 37 L.T. 157; *Pedgrift v Chevalier*, 29 L.J.M.C. 225; *Steele v Hamilton*, 3 L.T. 322; *R. v Lewis*, 12 T.L.R. 415 at 433; *Younghusband v Luftig* [1949] 2 K.B. 354; *Wilson v Inyang* [1951] 2 K.B. 799; PHYSICIAN.

See WILFULLY.

WILFULLY INSULTING. For the principles to be applied in determining whether behaviour is wilfully insulting a judge for the purposes of s.118 of the County Courts Act 1984 (contempt) see *Bell v Tuohy* [2002] 1 W.L.R. 2720, CA; [2002] 3 All E.R. 975, CA.

WILFULLY SUFFER. To “wilfully suffer” deleterious matter to pass into the Thames (Thames Conservancy Act 1894 (c. clxxxvii) s.92), there had to be more than a mere omission to do something to prevent the evil (*High Wycombe v Thames Conservators*, 78 L.T. 463); semble, the omission had to be deliberate and intentional (*R. v Senior* [1899] 1 Q.B. 283, cited WILFULLY). Cp. “cause or suffer”, under SUFFER; CAUSE OR PERMIT.

“Wilfully do or suffer”: see WILFULLY.

WILL. “The general principle I take to be clear. On the one hand, where a testator in a codicil uses the word ‘will’ abstractedly from the context, it will refer to all antecedent testamentary dispositions which together make the will of the testator; and consequently where the testator by a codicil confirms in general terms his will or his last will and testament, the will, together with all the codicils, is taken to have been confirmed. ‘The will of a man’, said Lord Penzance in *Lemage v Goodban* [L.R. 1 P. & D. 62, cited TESTAMENT], ‘is the aggregate of his testamentary intentions so far as they are manifested in writing duly executed according to the statute’. On the other hand, it is equally clear that the testator may, by apt words, express his intention to revoke any codicil already made, and to set up the original will unaffected by any codicil” (per Fry J., *Green v Tribe*, 9 Ch. D. 234), or may revoke his will without affecting a codicil thereto (*Farrer v St. Catherine’s College*, L.R. 16 Eq. 19). See further *Green v Tribe* for a review of the previous authorities.

As to the incorporation of documents with, and by, a will, see RATIFY, and *Re Smart* [1902] P. 238, and *Eyre v Eyre* [1903] P. 131, both cited RATIFY; WISH; *University College of North Wales v Taylor* [1908] P. 140; *Re White* [1924] W.N. 332.

A power to appoint personalty “by will” (*Re Price* [1900] 1 Ch. 442), or “by will duly executed” (*D’Huart v Harkness*, 34 L.J. Ch. 311), “means any testamentary instrument recognised by the law of England as a will” (per Stirling J., *Re Price*, above), which includes any will valid according to the law of the testator’s DOMICIL at

the time of his death (Dicey on the Conflict of Laws, 684, cited and adopted *Re Price*, in which case *Re Kirwan*, 25 Ch. D. 373, and *Hummel v Hummel* [1898] 1 Ch. 642, were discussed); ss.9, 10 of the Wills Act 1837 (c.26) have no application to wills of persons domiciled abroad, and therefore, in such cases, if the power requires special solemnities for its execution those requirements must be followed (*Barretto v Young* [1900] 2 Ch. 339). The execution of a power is not affected by the law of domicile as to the donee's testamentary capacity (*Pouey v Hordern* [1900] 1 Ch. 492). See further WILL ONLY.

Wills Act 1837 (c.26) s.27, does not render a general gift valid as an execution of a general power of appointment unless there is (as there was in *Re Price*, above) an indication on the will that it is to be read with reference to English law (*Re D'Este* [1903] 1 Ch. 898, followed in *Re Scholefield* [1905] 2 Ch. 408; see hereon *Re Harman* [1894] 3 Ch. 607). But see *Re Strong*, 95 L.J. Ch. 22. Cp. WRITING.

Mutual wills: see *Stone v Hoskins* [1905] P. 194; *Gray v Perpetual Trustee Co* [1928] A.C. 391; *Natal Bank v Rood*, 80 L.J.P.C. 22; *Walker v Gaskill* [1914] P. 192.

"Soldier's will": see *Beech v Public Trustee*, 92 L.J.P. 33; Wills (Soldiers and Sailors) Act 1918 (c.58). See also ACTUAL MILITARY SERVICE.

Power to a corporation to acquire land "by will": see PURCHASE.

"At the will of the lord": see COPYHOLD.

"Without a will": see INTESTATE.

"Conditional will": see TESTAMENT.

Stat. Def., Administration of Estates Act 1925 (c.23) s.55; Land Charges Act 1925 (c.22) s.20; Land Registration Act 1925 (c.21) s.3; Law of Property Act 1925 (c.20) s.205; Judicature Act 1925 (c.49) s.175; Inheritance (Family Provision) Act 1938 (c.45) s.5; Wills Act 1963 (c.44) s.6(1); Supreme Court Act 1981 (c.54) s.128; Forfeiture Act 1982 (c.34) s.2.

"Will or may" (Stamp Act 1891 (c.39) s.56(2)): see *Underground Electric Railway v Inland Revenue Commissioners* [1906] A.C. 21, cited MONEY PAYABLE.

Charter period "will be" exceeded: see *Hector SS Co v Sovfracht (VO) Moscow* [1945] K.B. 343.

Where a company's articles stipulated that the directors "will take" equally between them, at a fair price, the shares of any member desirous of selling, the word 'will' indicated a resultant prospective eventuality in which the directors must buy such shares (*Rayfield v Hands* [1960] Ch. 1).

"Will... become entitled to" (Finance Act 1975 (c.7), Sch.5 para.(1)(a)) means "will for certain become entitled" and not "will if no event happens to disentitle him"; so that relief from capital transfer tax in respect of accumulation and maintenance settlements provided by this Schedule is not available to settlements where the trustees are empowered to revoke the trusts of the settlement (*Lord Inglewood v IRC* [1983] 1 W.L.R. 366).

For a suggestion that "will" is "directory" rather than "mandatory", see *Woodhouse v Consignia Plc* [2002] 2 All E.R. 738, CA.

See TESTAMENT; CODICIL; LAST; MADE; SIGNED; WRITING; NOMINATE; TESTAMENTARY DOCUMENT; TESTAMENTARY INSTRUMENT.

WILL ONLY. If a "power to be appointed by 'will only', with remainder over in default of appointment, an immediate disposition cannot be made, and it can only take

WILLING

effect under a will, and after death" (Watson Eq. 847, citing *Socket v Wray*, 4 Bro. C.C. 483; *Reid v Shergold*, 10 Ves. 370; *Bradley v Westcott*, 13 Ves. 445; *Anderson v Dawson*, 15 Ves. 532).

WILLING. A person is willing to buy property only if he has given irrevocable proof of willingness by entering into a binding contract to purchase (*McCallum v Hicks* [1950] 2 K.B. 271). An offer to purchase "subject to contract, satisfactory survey and vacant possession" did not show that the offeror was "willing" to purchase (*Graham and Scott (Southgate) v Oxlade* [1950] 2 K.B. 257). See READY AND WILLING.

(Essential Work (Coalmining Industry) Order 1943 (No.505) art.4(1)(d).) An employee was not "willing" to perform services outside his usual occupation if he would only perform them if paid his former wages (*Wassell v West Cannock Colliery Co* [1947] K.B. 113).

Value of shares to be ascertained as between a "willing buyer and a willing seller" (Defence (General) Regulations 1939 reg.78(5)): see *Short v Treasury Commissioners* [1948] A.C. 534.

Compensation for land purchased or let for mining operations to be assessed "on the basis of what would be fair and reasonable between a willing grantor and a willing grantee" (Mines (Working Facilities and Support) Act 1923 (c.20) s.9)): see *Re Naylor Benzon Mining Co* [1950] Ch. 567.

In applying the test of a sale by a willing seller to a willing buyer, in assessing compensation under s.13(4) of the Coal Industry Nationalisation Act 1946 (c.59), there was no justification for splitting up the compensation unit, fixed by the Minister, into its constituent parts (*Cottages v Minister of Fuel and Power* [1952] 1 All E.R. 80).

The test of sale in the open market to a willing seller was to be applied in assessing the value of property for compensation under s.2(2) of the Acquisition of Land (Assessment of Compensation) Act 1919 (c.57): see *Collins v Feltham Urban DC* [1937] 4 All E.R. 189; *Wimpey & Co v Middlesex CC* [1938] 3 All E.R. 781; *Horn v Sunderland Corp* [1941] 2 K.B. 26; see also OPEN, para.(5).

The school "willing to receive" a child (Elementary Education Act 1876 (c.79) s.11) had to be named by the complainant (*Thompson v Rose*, 61 L.J.M.C. 26).

WILLINGLY. "If a wife willingly (sponte) leave her husband and go away and continue with her avowtrer", she forfeits her dower (13 Edw. 1, St. 1, c.34); here "willingly" "is used in contradistinction to a wife being taken away by force by the adulterer" (per Willes J., *Woodward v Dowse*, 31 L.J.C.P. 72), in which case it was held that a wife driven from her home by her husband's cruelty and committing adultery, had "willingly" left her husband within the statute. See further 2 INST. 434; Co. Litt. 32A, B; ELOPE.

Cp. UNWILLINGLY; WILFULLY; WITTINGLY.

WIMSEY. A wimsey is a windlass fixed in the ground, and worked 'by a steam engine' for the purpose of drawing materials from the mine (MacS. 246, fn.8, 9; cp. GIN).

WIN. "It has been doubted whether the money, etc. must be actually obtained, or whether winning a game by a false pretence would be within the word 'win', in s.17, Gaming Act 1845 (c.109), if the loser refused to pay the money" (Steph. Cr. (9th edn), 358, fn.3, citing *R. v Moss*, Dears. & B. 104). In *R. v Harris* and *R. v Turner* [1963] 2 Q.B. 442 it was held that "win" in this section meant "obtain".

“A covenant to ‘win’ a mineral means prima facie to reach it, and put it in such a condition that it may be continuously worked in the ordinary way” (MacS. 219, citing *Lewis v Fothergill*, 5 Ch. 106); following which definition the Court of Appeal said in *Rokeby v Elliot* (13 Ch. D. 279), “A coalfield is ‘won’ when full, practicable, available, access is given to the coalhewers so that they may enter on the practical work of getting the coal”. See WORKABLE; GET.

Covenant to “fairly, duly and honestly win, work, recover, obtain, and get the whole of the said mine”: see *Watson v Charlesworth* [1905] 1 K.B. 74; affirmed in House of Lords, nom. *Charlesworth v Watson* [1906] A.C. 14, following *Walker v Jefferys*, 11 L.J. Ch. 209, and *Jervis v Tomkinson*, 26 L.J. Ex. 21, cited DUE DILIGENCE; in *Walker v Jefferys* the words were that the mine should be “fairly got and regularly worked out to as little disadvantage as possible”.

“Against this background I turn to consider the meaning of the word ‘win’ under CFA and the effect of a two stage success fee in this case. There can be no doubt that the interpretation of clause (3n), the definition of ‘win’ under the CFA, must be construed with regard to the contract as whole and taking into account its other relevant terms. Firstly, however, one must consider (3n) itself in which the primary definition of a ‘win’ is set out. Under this clause the claim is won when it is ‘finally decided in your favour, whether by a court decision or an agreement to pay your damages’. Until an amount of damages is agreed there cannot be any agreement in respect of which the claimant could sue for breach or otherwise enforce. If the amount acceptable to the claimant were not finally agreed, the claimant would then not only be able, but also be obliged, in order to continue with her claim, to pursue her matter to court and obtain a decision. There would then be a right of appeal by her opponent, if it was so advised, and the case could only then be won if an appeal was either not permitted, or out of time or lost. It is therefore my view that the ordinary and natural meaning of the word ‘agreement’ in (3n) is a concluded agreement for an amount of damages that the claimant has accepted and could enforce, as any agreement short of that could lead to the matter being taken to court and the defendant appealing the decision made. A win therefore is when the litigation has been concluded either by decision or by concluded agreement in the claimants favour. I would add that I am doubtful that clause (3n) could have two alternative meanings, first, ‘agreement’ providing a ‘win’ as soon as liability had been admitted and judgment entered for the assessment of damages, and second ‘a court decision’ which could only amount to a win at a much later stage when the decision of the court had been given and the opportunity to appeal had passed. I do not consider that it can have been the intention of the parties to enter into such an agreement on 3 February 2006 when it was already known that liability had been admitted. Furthermore the use of the words ‘or in agreement to pay your damages’ in Clause (3n) may well have been used advisedly. The wording is not to pay ‘you’ damages but ‘your’ damages. This suggests that the agreement is to pay the claimant the damages to which she as an individual is entitled, not merely damages in principle. The fact that she was entitled to recover damages after the admission of liability and judgment being entered for damages to be assessed was not therefore sufficient: there had to be an agreement to pay her an amount of damages acceptable to her before a ‘win’ would occur under Clause (3n).” (*Fortune v Roe* [2011] EWHC 2953 (QB); see also *Manning v King’s College Hospital NHS Trust* [2011] EWHC 2954 (QB).)

See WINNING.

WIND AND WATER TIGHT. At p.637, Woodf. (10th edn), it is stated that the obligation on the part of a tenant to keep his tenement "wind and water tight" "ought to be construed strictly in favour of the tenant. To put an example, it would seem that the broken glass of windows need not be replaced by new glass, but that an exclusion of wet by boards or other unsightly modes would be sufficient".

"I think that the expression 'wind and water tight' is of doubtful value and should be avoided": (per Denning L.J., *Warren v Keen* [1954] 1 Q.B. 15).

WINDFALL. A windfall is a timber tree blown down by the wind; the proceeds of windfalls (as between tenant for life and remainderman) should be invested as capital, the annual income generally going to the tenant for life, but who will, under some circumstances, be entitled to have his average annual income from the timber plantation made up, if necessary, out of capital, whilst any excess over such average income arising in consequence of the investment of the proceeds of the windfalls may be ordered to be invested as capital (*Re Harrison*, 28 Ch. D. 220); see further *Bateman v Hotchkin*, 32 L.J. Ch. 6; *Tooker v Annesley*, 5 Sim. 235.

As between the heir and the executor a windfall, if severed from the soil, is personalty, if not, it is realty; the question of severance being one fact in the case of each particular tree (*Re Ainslie*, 30 Ch. D. 485).

WINDING-UP. The winding-up of the affairs of a company, registered under the Companies Acts, is of three kinds:

(a) Compulsory, or by the court: see hereon Companies Act 1985 (c.6) ss.512–571.

(b) Voluntary: see hereon Companies Act 1985 (c.6) ss.572–605; Buckl. 345–365; *Re National Company for Distribution of Electricity* [1902] 2 Ch. 34. A compulsory winding-up changes the personality of a company, *secus*, of a voluntary winding-up (*Midland Counties District Bank v Attwood* [1905] 1 Ch. 357, rejecting *Re Imperial Wine Co*, *Shirreff's Case*, L.R. 14 Eq. 417, and discussing *Reid v Explosives Co*, 19 Q.B.D. 264). See further *Reigate v Union Manufacturing Co*, 87 L.J.K.B. 724; *Re Havana, etc. Co* [1916] 1 Ch. 8.

(c) Subject to supervision of the court: see hereon Companies Act 1985 (c.6), ss.606–610.

As to the construction of surplus assets clause, in a winding-up, see *Birch v Cropper*, 14 App. Cas. 525; *Ex p. Maude*, 6 Ch. 51; *Re Anglo-Continental Co* [1898] 1 Ch. 327; *Re New Transvaal Co* [1896] 2 Ch. 751, cited SURPLUS. See *Re Ramel Syndicate* [1911] 1 Ch. 749.

"Winding-up" (Building Societies Act 1874 (c.42) s.32(4)) meant winding-up under the Companies Acts 1862, 1867 (*Re Sunderland Building Society*, 21 Q.B.D. 349) or the Companies Winding-up Act 1890 (Building Societies Act 1894 (c.47) s.8).

A winding-up may be ordered against a building society whose registry has been cancelled under s.6 of the Building Societies Act 1894 (c.47) (*Re Grosvenor House Property Acquisition, etc. Society*, 71 L.J. Ch. 748). See further *Re Ilfracombe Building Society*, 70 L.J. Ch. 72, cited FORMED.

So, in a bank charter, though granted before the Companies Act 1862, "winding-up the affairs of the corporation" included a winding-up under the statutory powers for the time being in force, i.e. under the Companies Act 1862, and the Acts amending the same (*Re Oriental Bank*, 54 L.J. Ch. 481).

"Winding-up of any partnership" (County Courts Act 1888 (c.43) s.67(7)). There might have been an action or application for the winding-up of a partnership

notwithstanding that the alleged partnership was disputed by the defendants (*R. v Judge Lailey, Ex p. Koffman* [1932] 1 K.B. 568; affirmed 1 K.B. 577).

"In the course of winding-up" (Companies Act 1948 (c.38) s.276(1); see now Companies Act 1985 (c.6) s.570) is not confined to matters arising after a winding-up order has been made, but refers to all matters arising after the presentation of the petition (*Re Dynamics Corp of America* [1973] 1 W.L.R. 63).

"Beneficial winding-up": see BENEFICIAL.

See LIQUIDATION; ORDERED; SUPERSEDE.

WINDOW. A plate-glass shop-front, fixed with wooden wedges, without screws, nails or glue, and removable without injury to the premises (whether or not an "improvement"), is a "window" "affixed or belonging" to the premises, within a covenant to deliver up the premises "with all windows", "improvements", etc. (*Burt v Haslett*, 25 L.J.C.P. 201). See further IMPROVEMENT.

The sloping glazed top, as well as the glazed vertical side, of a conservatory looking on to adjoining premises, was a "window overlooking" those premises, within a "consent or agreement by writing" (see IN WRITING), under s.3 of the Prescription Act 1832 (c.71) (*Easton v Isted* [1903] 1 Ch. 405); in that case Joyce J., said: "A window is not less a window because it is not capable of being opened, nor is it less a window because the plane in which it is fixed is not vertical. I think the glazed top was just as much a window as the fixed portions of the vertical side; and, inasmuch as it received light over the defendant's property, I think it 'overlooked' the property in the sense in which that term is used in the agreement". See LIGHT.

As to gifts for the repair of a window in a church, see *Hoare v Osborne*, L.R. 1 Eq. 585, cited CHURCH.

A landlord's covenant to repair main walls does not include repair of the windows and sashes, although for certain purposes they may be regarded as part of the walls (*Holiday Fellowship v Hereford* [1959] 1 W.L.R. 211).

See EXTERNAL PARTS; FIXED AND FASTENED.

WINDSTORM. As used in a policy of insurance the word is not synonymous with "cyclone" or "tornado" (*Pollock Bros & Co v Halifax Insurance Co* [1946] 2 D.L.R. 476).

WINE. The admixture of a little water with wine does not prevent its being "wine", within the Rubric to the Communion Office; and, if the mixing be done before the service, the use of such "wine" is not unlawful (*Read v Lincoln (Bishop)* [1892] A.C. 644); but it is illegal to mix water with the wine during the celebration of the Eucharist (*Martin v Mackonochie*, L.R. 2 A. & E. 116).

"Wine" (Sale of Beer, etc. on Sunday Act 1847 (c.49) s.1) included British Wine (*Harris v Jenns*, 30 L.J.M.C. 183).

"Spirits of wine": see SPIRITS.

Stat. Def., Customs and Excise Act 1952 (c.44) s.307; Finance (No.2) Act 1975 (c.45) s.14(5); Alcoholic Liquor Duties Act 1979 (c.4) s.1(4).

WINE CELLARS. A covenant in a lease of cellars under a chapel that they shall be used "as for wine cellars only, and not for interment or burial", is broken by the user of the cellars for the storage and sale of beer and spirits (*Turner v Marriott*, Dart, 873). See ONLY.

WING WALL. "Wing wall, ramparts, and side banks" of a bridge: see *Att-Gen v Oxford Canal Navigation*, 72 L.J. Ch. 285, cited BRIDGE.

WINNING. “Winning and working” (Town and Country Planning General Development Order 1963 (No.709) Sch.1 Class VIII). A plant used for refining and drying china clay slurry was not “winning and working” the clay within the meaning of this Order (*English Clays Lovering Pochin & Co v Plymouth Corp* [1973] 2 All E.R. 730).

“Winnings” (Betting, Gaming and Lotteries Act 1963 (c.2) s.55) denotes the money or money’s worth which comes to a player over and above what he has staked (*McCullom v Wrightson* [1968] A.C. 522).

“Winnings”: Stat. Def., Gaming Act 1968 (c.65) s.52; Betting and Gaming Duties Act 1972 (c.25) s.12.

“Winning or working”: Stat. Def., Development Land Tax Act 1976 (c.24) s.17(7). Stat. Def., s.48(3) of the Finance Act 2001 (c.9).

WISDOM. “Good wisdom and discretion”: see DISCRETION.

WIRELESS APPARATUS. Stat. Def., Justice and Security (Northern Ireland) Act 2007 Sch.3 para.1(3).

WIRELESS TELEGRAPHY. Stat. Def., Wireless Telegraphy Act 2006 s.116.

WIRELESS TELEGRAPHY APPARATUS. Stat. Def., Wireless Telegraphy Act 2006 s.117(1).

WIRELESS TELEGRAPHY LICENCE. Stat. Def., Wireless Telegraphy Act 2006 s.8.

WIRELESS TELEGRAPHY STATION. Stat. Def., Wireless Telegraphy Act 2006 s.117(2).

WISH. Generally, a direction in a will that property is to be distributed or paid in the manner that the testator has directed or wished by word of mouth, is void, as offending against s.9 of the Wills Act 1837 (c.26). Thus, where a testator gave his wife a life interest in his property and added, “I desire and empower her by her will, or in her lifetime, to dispose of my estate ‘in accordance with my wishes verbally expressed by me to her’, it was held that that power was void, and that evidence was inadmissible to prove what were the wishes (*Re Hetley* [1902] 2 Ch. 866, distinguishing *Re Fleetwood*, *Sidgreaves v Brewer*, 15 Ch. D. 594; see further *Johnson v Ball*, 21 L.J. Ch. 210). So, a gift to A “for the charitable purposes agreed upon between us” can be explained by extrinsic evidence as regards the charitable purposes intended, but not so as to alter or limit the quality or *quantum* of the gift (*Re Huxtable* [1902] 2 Ch. 793). Cp. SECRET TRUST; *Blackwell v Blackwell* [1929] A.C. 318.

Where wishes are expressed in a document, the will sometimes incorporates the document and so gives the wishes validity: see hereon RATIFY; *Re Smart* [1902] P. 238, and *Eyre v Eyre* [1903] P. 131, both cited RATIFY.

For construction of the words “I wish” in a will, see *Re Burley* [1910] 1 Ch. 215.

WISTA. Half a hide; great wista, a hide (Elph. 630, citing Seebohm, 51; Spelm. *Wista*, where it is said that wista is sometimes used for VIRGATE).

WIT. “To wit”: see MEMORANDUM; NAMELY; TO WIT.

See WITE.

WITCH. “Thou art a witch and a sorcerer” was formerly slander, “for if he witcheth men so as they die, it is felony; and if he uses witchcraft in any other manner, he shall stand upon the pillory” (per Gawdy J., *John Rogers v Gravat*, Cro. Eliz. 571).

“Thou shalt not suffer a witch to live” (Exodus xxii, 18), which, according to *Rogers v Gravat*, included a man as well as a woman, but the Revised Version substitutes “sorceress” for “witch”.

See CONJURATION.

WITCHCRAFT. See WITCH; 4 Bl. Com. 60 et seq.

Probably the first Act of Parliament against witchcraft was 33 Hen. 8, c.8, "ayest Conjuracons and Wichecraftes and Sorcery and Enchantments".

The later statute law respecting witchcraft was probably begun by 5 Eliz., c.16, "against Conjuracions, Enchantments, and Witchcrafts", which was repealed by 1 Jac. 1, c.12, the enactments of which had a like object. The Act of James was repealed by (9 Geo. 2, c.5), which (by the Short Titles Act 1896) received the title of "The Witchcraft Act 1735", the enacting provisions of which were contained in its 3rd and 4th sections, which remained unrepealed by Statute Law Revision Act 1887 (c.59), except so much of s.4 as provided the punishment of pillory. These sections were not repealed until 1951 (Fraudulent Mediums Act 1951 (c.33) s.2(a)). By s.3 of the Witchcraft Act 1735, no person (after June 24, 1736) was to be prosecuted or sued "for witchcraft, sorcery, incantment, or conjuration, or for charging another with any such offence"; but (as from that date) by s.4 it was a punishable offence to "pretend to exercise or use any kind of witchcraft, sorcery, incantment, or conjuration, or undertake to tell fortunes, or pretend, from his or her skill or knowledge in any occult or crafty science, to discover where or in what manner any goods or chattels supposed to have been stolen or lost may be found".

For a conviction for conjuration under the Witchcraft Act 1735 (9 Geo. 2, c.5) s.4, see *R. v Duncan* [1944] K.B. 713.

Cp. GYPSIES; ROGUE AND VAGABOND.

WITE. "*Wite, wita*, is an old Saxon word, and signifieth an amerciament; as, *fledwite*, an amerciament for fleeing or being a fugitive; and so is *flemiswite*, *blodwite* and amerciament for drawing of blood, *ferdwite* concerning warfare; and so *letherwite*, *childwite*, *wardwite*, and the like. Sometimes it signifieth forfeiture, sometimes freedom, or acquittall" (Co. Litt. 127A). See further *Termes de la Ley*, *Bloodwit*, *Childwit*, *Ferdwit*, *Fledwite*, *Fletwit*, *Hangwit*, *Lotherwit*, *Warwit*.

WITH. "'With' taken to mean 'and as incident thereto'" (Dwar. 692, citing *Durham Railway v Walker*, 2 Q.B. 966).

"With", in a devise of a house "with all the household goods therein" so conjoins the goods with the house that the devisee can have no larger interest in the goods than in the house (*Leeke v Bennett*, 1 Atk. 470).

"Twelve months beginning with the date of its issue" (R.S.C. Ord.6 r.8(1)). "It is no doubt a pity that this inconvenience should arise from the use in the rule of the word 'with' instead of the word 'from'; but even the shortest single word can affect the whole meaning of any enactment. I do not think that the proposition that a period stated 'as beginning with' a certain date does begin on that date it depends on any fine distinction, legal subtlety or empty formality. In my view it depends on the plain and natural meaning of ordinary English words" (per Salmon L.J., *Trow v Ind Coope (West Midlands)* [1967] 2 Q.B. 899).

"Gross indecency with another man" (Sexual Offences Act 1956 (c.69) s.13); "with" means "against" or "directed towards" (*R. v Hall* [1964] 1 Q.B. 273). The word "with" in the section means that it is necessary to prove the participation and therefore consent of both men for a charge to be successful against either of them (*R. v Preece*; *R. v Howells* [1977] Q.B. 370).

WITH

“With or towards” (Indecency with Children Act 1960 (c.33) s.1(1)). These words must be read as a phrase, the words “or towards” explaining the word “with”, so that there is only one offence of gross indecency involving a child (*DPP v Burgess* [1970] 3 W.L.R. 805).

“Has with him an offensive weapon”: see HAS; HAVE.

See TOGETHER WITH; THEREWITH.

WITH A VIEW. “With a view of giving a preference” to a creditor: see *Re Cohen* [1924] 2 Ch. 515. See VIEW.

“With a view” to the safeguarding of the dye-making industry, within s.1(1) of the Dyestuffs (Import Regulations) Act 1920 (c.77): see *Whyte, Ridsdale & Co v Att-Gen* [1927] 1 Ch. 548.

“With a view to adoption” (Adoption Act 1958 (c.5) s.52(1)) has a broad meaning and covers not only removals from the country for the immediate purpose of adoption, but also to removals where the prime purpose is to have the child under care before returning it to this country preparatory to making an application for adoption. (*Re M.* [1973] 2 W.L.R. 515).

See A.

WITH A VIEW TO. “The judge drew a distinction between the words ‘with a view to’ and the words ‘with the intention of’. In our view, he was right to do so. . . . It is stated that, whilst it is probably not necessary to show that the defendant’s primary purpose . . . it must be one of his objectives. We agree that it need only be one of his objectives.” (*R. v Dooley* [2005] EWCA Crim 3093 paras 13–14.)

“By use of the phrase ‘with a view to’, the language of section 69 of the Proceeds of Crime Act 2002 retains the same terminology as that which appeared in section 31 of the Drug Trafficking Act 1994 and there is nothing in the wording of the Proceeds of Crime Act 2002 to suggest that the meaning of those words is different, or should be applied any differently, from the interpretation of the Administrative Court in *Customs & Excise v A* [2003] Fam 55. The phrase retains such ‘elasticity’ as to permit a diminution in the available amount and it contemplates striking an appropriate balance between the same competing public policy considerations between confiscating the proceeds of crime and making proper financial provision for a wife.” (*Webber v Webber* [2006] EWHC 2893 (Fam) at [42].)

WITH A VIEW TO GAIN. See GAIN.

WITH ALL CONVENIENT SPEED. See CONVENIENT SPEED.

WITH ALL DESPATCH. See CUSTOMARY; DESPATCH.

WITH ALL FAULTS. See FAULTS.

WITH ALL LIBERTIES. An original grant of a fair, “with all liberties” merely, does not include tolls, for toll is not incident to a fair; but when toll, by grant or prescription, is payable in respect of a fair, and the fair becomes forfeited to the Crown by whom it is re-granted “*cum omnibus libertatibus ad hujusmodi feriam spectantibus*”, there toll passes (*Heddy v Wheelhouse*, Cro. Eliz. 591).

So, a grant of a market, “with all liberties and free customs to such a market belonging”, does not give the right to prevent tradesmen from selling, on market days, marketable articles in shops within the limits of the franchise; though the grantees may acquire such a right by prescription, or, semble, it might have been granted by apt words in the charter (*Penryn v Best*, 3 Ex. D. 292).

See CUSTOM; TOLL.

WITH ALL MINES. “Where a man has unopened mines within his land, and demises for life or years such land ‘with all mines therein’, the lessee may, prima facie, as between himself and his grantor, dig the unopened mines and will not, by so doing, commit WASTE (*Saunders’ Case* 5 Rep. 12 a; Co. Litt. 54B; *Darcy v Askwith* Hob. 234; *Clegg v Rowland* L.R. 2 Eq. 160); for otherwise the words ‘with all mines therein’ would have no effect (Co. Litt. 54B)”; MACS. (5th edn), 48. See *Boileau v Heath* [1898] 2 Ch. 301, cited IRON.

See MINE.

WITH EFFECT. See EFFECT.

WITH FORCE AND ARMS. See FORCE.

WITH HIM. “Has with him”: see HAS. See also POSSESSION; REASONABLE EXCUSE (8).

WITH INTENT. As to the result of omitting the words “with intent to defraud”, in an indictment: see *R. v Fraser*, 93 L.J.K.B. 236.

The words “with intent to avoid payment” (London Passenger Transport Act 1936 (c. cxxxi) s.91(2)) do not necessarily import a dishonest intention, but merely that the passenger intended not to pay what in fact turned out to be the proper fare (*Covington v Wright* [1963] 2 Q.B. 469).

“With intent to stir up hatred” (Race Relations Act 1965 (c.73) s.6(1)). Leaving a pamphlet at the door of an M.P.’s house was not a distribution “with intent to stir up hatred” within the meaning of this section (*R. v Britton* [1967] 2 Q.B. 51).

WITH INTENT TO AND WITH A VIEW TO. Section 92(1) of the Trade Marks Act 1994 uses “with a view to” and “with intent to”. The terms are clearly not synonymous or both would not have been used. The concept “with a view to” means that the offender had something in his contemplation, not necessarily something which he wanted or intended to happen, but which might realistically occur (*R. v Zaman*, T.L.R., July 22, 2002, CA).

WITH LEAVE. A child suspended from school because of his parent’s refusal to return him to the school was not absent “with leave” within the meaning of s.39 of the Education Act 1944 (c.13) (*Happe v Lay* (1977) 76 L.G.R. 313).

WITH RESPECT TO. See IN RESPECT OF; THERETO, para.(2).

WITH THE APPURTENANCES. See APPURTENANCES; WAYS.

WITHDRAW. An agreement by a partner to “withdraw from the firm” means to withdraw at once; and it further means, (a) “that the withdrawing partner shall make over to the continuing partners all his interest in the partnership and in the partnership assets, whether there be real or personal estate, whether there be outstanding contracts, or anything of the kind”; (b) “that the continuing partners shall indemnify the retiring partners against all the liabilities of the firm from that time forth. They take the assets, they take the benefit of the contracts, they take the chances of success for the future, and they must keep him indemnified” (per Kekewich J., *Gray v Smith*, 58 L.J. Ch. 805; affirmed 43 Ch. D. 208); but an agreement to “withdraw” (without more) does not imply that the continuing partner is entitled to continue to use the withdrawing partner’s name (*Gray*). Cp. ASSETS. See GOODWILL.

A lessee’s covenant, in a lease of licensed premises, to afford no ground for “discontinuing”, “withdrawing”, or “withholding” the licence, “applies indiscriminately to a case of forfeiture and a case of non-renewal” (per Lord Macnaghten, *Bryant v Hancock* [1898] 1 Q.B. 716, cited ASSIGNS).

WITHDRAWAL

An agreement to withdraw a petition for judicial separation means that the petition will be dismissed by consent (*Goldblum v Goldblum* [1939] P. 107).

See WITHDRAWN.

WITHDRAWAL. "Withdrawal" member of a building society: see *Re Norwich & Norfolk Building Society*, 45 L.J. Ch. 785; see thereon per Selborne C., *Walton v Edge*, 10 App. Cas. 39. See also *Re Sunderland Building Society*, 24 Q.B.D. 394. See MEMBER; UNADVANCED.

As to the incidence of a bank's withdrawal fee or income fee, see *Re Godwin* [1938] Ch. 341.

WITHDRAWN. Execution "withdrawn, satisfied, or stopped" (Sheriffs Fees Order, August 31, 1888): see per Esher M.R., *Lee v Dangar* [1892] 2 Q.B. 337.

WITHHELD. If a licence or permission is "not to be withheld" if a prescribed condition is complied with, that means that "it shall be given" on such compliance (per Kay L.J., *Perls v Saalfeld* [1892] 2 Ch. 149; but see *Treloar v Bigge*, L.R. 9 Ex. 151, cited UNREASONABLY).

Where a renewal of planning permission was granted two days after the expiry of the existing permit, it was held that permission had not been "withheld" within the meaning of a clause in a lease (*Bewick v Bailey's Casinos* (1973) 227 E.G. 1167).

WITHHOLD. A person having possession of the property of a friendly society did, prima facie, "withhold or misapply" it (Friendly Society Act 1875 (c.60) s.16(9)) if he did not properly account for it (*R. v Bennett*, 63 L.J.M.C. 181); but the presumption might be rebutted, for the withholding had in some way to partake of fraud (per Willes J., *Barrett v Markham*, L.R. 7 C.P. 405; see further *Scott v Wilson*, 9 T.L.R. 492).

So, to "wilfully withhold or fraudulently misapply" the property of a trade union (Trade Union Act 1871 (c.31) s.12) connoted some fraud or dishonesty in the withholding (*Madden v Rhodes* [1906] 1 K.B. 534, following *Barrett v Markham*, above).

The offence (Trade Union Act 1871 (c.31) s.12) of "wilfully withholding" money belonging to a trade union did not involve continuous possession of the money up to the time of the charge; money taken and squandered was "withheld" (*Best v Butler and Fitzgibbon* [1932] 2 K.B. 108).

"Withholding by the engineer of any certificate" (Institution of Civil Engineers' General Conditions of Contract (4th edn), cl.66). The rejection by the engineer of the plaintiff's claim to be paid during the currency of the contract for certain work of excavation, was a "withholding" with the clause (*Farr (A. E.) v Ministry of Transport* [1960] 1 W.L.R. 956).

"Withholding" a licence: see *Bryant v Hancock*, cited WITHDRAW.

WITHIN. "The word 'within' in relation to a period of time does not usually mean 'during' or 'throughout the whole of'; it is more frequently used to delimit a period 'inside which' certain events may happen" (per O'Bryan J., in *Reynolds v Reynolds* [1941] V.L.R. 249).

Where something is to be done "within" a stated time "before" a stated date, that means that it is to be done at some time during the course of the stated time immediately preceding the stated date (*Thomas v Lambert*, 4 L.J.K.B. 153). See IN; CALENDAR MONTH; MONTH; REASONABLE TIME; TIME; WEEK; YEAR.

"Within due time after my death": this expression in a devise to the sons of another person "whether born in my lifetime or within due time after my death" was construed

as “within the period of gestation” and not as referring to the period allowed by the rule against perpetuities (*Re Watson* [1930] 2 Ch. 344).

“Within” so many days “after” an event, means days exclusive of the day of the event (*Williams v Burgess*, 10 L.J.Q.B. 10; *Robinson v Waddington*, 18 L.J.Q.B. 250; *Radcliffe v Bartholomew* [1892] 1 Q.B. 161, cited CALENDAR MONTH; *Stewart v Chapman* [1951] 2 K.B. 792). So, of “not exceeding” so many days “from” the event (*Frew v Morris*, 34 Sc. L.R. 527); see further NOT LESS.

“Within four months” (Companies Act 1985 (c.6) s.428(1)). “To say that something must be approved within four months appears to me to allow any date within that period to be fixed for such approval” (per Wynn-Parry J., *Re Western Manufacturing (Reading)* [1956] Ch. 436).

“Within three years” (Taxes Management Act 1970 (c.9) s.103(1)) means “not later than three years” (*R. v IRC, Ex p. Knight* [1973] 3 All E.R. 721).

Where a statute gave power to assess, for expenses of road-repair, all premises “within” certain streets, it was held that a yard—Kent and Essex Yard, Whitechapel—set back from one of such streets, and having other houses between it and the street, but the only access to which was from the street by means of carriage gates and along a private covered way, was “within” the street (*Badddeley v Gingell*, 1 Ex. 319). In that case, Alderson B. said, “You cannot say that any house is literally ‘within’ the street, and we must therefore come to the consideration of what is intended by the expression ‘within’”; the yard was held (see especially judgment of Parke B.) to be “within” the street, because its sole communication was by means of the street, and because it “fronted” and “abutted on” and derived the benefit of repairs to, the street.

“Within the curtilage”: see *Pilbrow v St. Leonards* [1895] 1 Q.B. 33, 433, cited CURTILAGE.

“Within a stated distance”: see *R. v Saffron Walden*, 9 Q.B. 76.

“Debts within a stated locality”: see IN; *Re Clark* [1904] 1 Ch. 294, cited IN.

“Within such district”: see *Manchester Carriage Co v Swinton*, 90 L.T. 795, affirmed House of Lords [1906] A.C. 277, cited USED.

Salvage of life “within the limits of the United Kingdom” (Merchant Shipping Act 1854 (c.104) s. 458; Merchant Shipping Act 1894 (c.60) s.544): see *The Johannes*, 30 L.J.P.M. & A. 91; *The Pacific* [1898] P. 170, cited PART.

Trade “exercised within the United Kingdom” (Income Tax Act 1853 (c.34) s.2, Sch.D): see per Lord Herschell, *Grainger v Gough* [1896] A.C. 335.

A notice to quit requiring the tenants to vacate premises “within a period of three months” did not necessarily require them to vacate before the end of that period, and was not therefore inconsistent with a clause in the lease specifying “not less than three months previous notice in writing” (*Manorlike v Le Vitas Travel Agency* [1986] 1 All E.R. 573).

“Within three months before the petition”: see BEFORE.

“Within” two named times: see FROM.

“At or within”: see AT.

Cp. AT LEAST; CLEAR; INTERVAL; FORMING; FRONTING; IN; NAVIGATING WITHIN.

WITHIN HIS PARISH. See CLERGYMAN.

WITHIN OR UNDER. It seems difficult to see how a grant of “minerals” “within or under” land is fuller, and less liable to receive a restricted meaning than if “under”

WITHIN

alone were used; but this suggestion has been made (per Romilly M.R., *Midland Railway v Checkley*, L.R. 4 Eq. 25; observed upon by Wickens V.C., *Hext v Gill*, 7 Ch. 705, fn.; see further MacS. 13).

For an example of construction of “under” in such a connection: see *Chamber Colliery Co v Rochdale Canal Co* [1895] A.C. 564, on which case see *New Moss Colliery Co v Manchester, Sheffield & Lincolnshire Railway* [1897] 1 Ch. 725.

WITHIN THE JURISDICTION. The question whether a defendant out of the jurisdiction who voluntarily submits to the jurisdiction after the writ is served is a “person . . . within the jurisdiction” for the purposes of R.S.C. Ord.11 r.1(2) was discussed in *Amanuel v Alexandros Shipping Co, The Alexandros P* [1986] Q.B. 464).

“Service on a defendant within the jurisdiction” (R.S.C. Ord.10 r.1(2)). The words “within the jurisdiction” apply to the defendant and not to the writ for service (*Barclays Bank of Swaziland v Hahn* [1989] 1 W.L.R. 506).

See also PROPERLY.

Contract which “ought to be performed within the jurisdiction” (R.S.C. old Ord.11 r.1(g)): see *Hassall v Lawrence*, 4 T.L.R. 23; *Robey v Snaefell Co*, 57 L.J.Q.B. 134; *Wanke v Wingren*, 58 L.J.Q.B. 519; *Reynolds v Coleman*, 56 L.J. Ch. 903; *Fry v Raggio*, 40 W.R. 120; *Hoerter v Hanover Caoutchouc Co*, 10 T.L.R. 103; MADE; TERMS. See further *Duval Co v Gans* [1904] 2 K.B. 685; *Hemelyrch v William Lyall Shipbuilding Co* [1921] 1 A.C. 698.

“Contract made within the jurisdiction”: see *British Controlled Oilfields Ltd v Staggs* [1921] W.N. 319; *Bowling v Cox* [1926] A.C. 751.

Crimes “committed within the jurisdiction of either of the high contracting parties” (Extradition Act 1843 (c.76) s.1) meant committed within the peculiar jurisdiction of one of those parties, as distinct from a common jurisdiction (*Re Tivnan*, 33 L.J.M.C. 201, cited PIRACY).

See CARRY ON.

WITHIN THE REALM. See REALM.

WITHIN THE SYSTEM. See ARISING.

WITHOUT AFFECTING. Power to determine works contract “without thereby affecting in any other respects the liability of the contractor”: see *Re Yeadon Waterworks Co and Binns*, 98 L.T. 473.

WITHOUT ANY DEDUCTION. “Without any deduction except for death duties”: see *Re Portman (Viscount)* [1922] 2 A.C. 473, cited HEIR.

The words “without any deduction” in a lease, in the absence of guidance as to the intended meaning, were insufficient to exclude a tenant’s equitable right of set-off in subsequent litigation (*Famous Army Stores v Meehan* [1993] 1 E.G.L.R. 73 not followed) (*Connaught Restaurants v Indoor Leisure* [1994] 1 W.L.R. 501).

WITHOUT BEING MARRIED. Semble, is synonymous with “UNMARRIED”.

See WITHOUT HAVING BEEN MARRIED.

WITHOUT BENEFIT OF SALVAGE. A policy on profits was within Marine Insurance Act 1746 (c.37) s.1; and if made “without benefit of salvage”, although “free from average”, it was avoided (*De Mattos v North*, L.R. 3 Ex. 185, following *Smith v Reynolds*, 25 L.J. Ex. 337; see FULL INTEREST ADMITTED).

A policy “without benefit of salvage”, omitting the words “to the insurers”, is within the prohibition of the Act (*Allkins v Jupe*, 2 C.P.D. 375).

See GAMING CONTRACT; HONOUR; INTEREST.

WITHOUT CHILDREN. See DIE WITHOUT CHILDREN.

WITHOUT DANGER. Merchant Shipping Act 1894 (c.60) s.422: see *The San Onofré*, 92 L.J.P. 17.

WITHOUT DAY. “To be dismissed without day is to be finally discharged by the court” (Cowel, *Day*, citing Kitchen, fo. 193). “To be discontinued and to be put without day, is all one” (Termes de la Ley, *Discontinuance*). But this seems too broadly stated, and, semble, to be dismissed without day means to be dismissed without any time being named to appear again. Thus, in *Goddard v Smith* (6 Mod. 261), Holt C.J. said, “the entering a *nolle prosequi* was only putting the defendant *sine die*, and, so far from discharging him from the offence, that it did not discharge any further prosecution upon that very indictment, but that, notwithstanding, new process might be made out upon it”.

WITHOUT DEDUCTION FOR INCOME TAX. Means free of income tax (*Re Williams* [1936] Ch. 509). See also DEDUCTION.

WITHOUT DISPUTE. An agreement to accept a title “without dispute”, or “such as the vendor has”, will preclude objections (Dart, 169); *secus*, if the vendor has no title at all, for he must at least show a bona fide title (*Keyse v Hayden*, 20 L.T.O.S. 244).

WITHOUT FOUNDATION. (Asylum and Immigration Appeals Act 1993 Sch.2 para.5(3)(a).) A claim for asylum was “without foundation” if it was unnecessary for the Secretary of State to decide whether a claimant was a refugee who ought to be admitted by virtue of Convention obligations because he could be removed to a third country in which he did not fear persecution (*R. v Secretary of State for the Home Department, Ex p. Mehari* [1994] Q.B. 474).

WITHOUT HAVING BEEN MARRIED. This phrase, as frequently employed, excludes the husband, but not the descendants of the woman spoken of (*Wilson v Atkinson*, 33 L.J. Ch. 576; *Re Ball*, 11 Ch. D. 270; *Upton v Brown*, 12 Ch. D. 872; *Re Arden*, 35 S.J. 70; *Stoddart v Savile* [1894] 1 Ch. 480; *Re Forbes* [1899] W.N. 6). But the contrary was held by Jessel M.R., who said that the phrase is unambiguous and means as if the woman had died a spinster (*Emmins v Bradford*, 13 Ch. D. 493; see further *Re Watson*, 55 L.T. 316). The Court of Appeal approved *Emmins v Bradford* saying that the cases here previously cited went upon the context (*Re Brydone* [1903] 2 Ch. 84, which approved *Re Smith* [1903] 1 Ch. 373, and overruled *Re Mare* [1902] 2 Ch. 112; and was followed in *Re Ellis, Wasbrough v Boyce* [1922] 1 A.C. 425, cited SPINSTER).

The previous cases cited above (except *Re Watson*) were on marriage settlements, in which cases the general opinion was that the presumption in favour of not excluding children was so strong as to amount to a hard-and-fast rule. The exact decision of the Court of Appeal in *Re Brydone* was that there was no such rule even as to marriage settlements, and the court in that case (as Swinfen Eady J. had done in *Re Smith*) found a context from which “die without having been married” was held to its natural meaning of “die a spinster”, and so to exclude children. *Re Watson* was the case of a will, and there Chitty J. said that in that case there was no presumption to alter the natural meaning, and in fact there was no context to work such an alteration.

It is submitted that the rule hereon may now be stated thus: A provision that in case a woman dies “without having been married” means if she dies a spinster, unless there be a context which confines the phrase to connote the exclusion of the marital right;

WITHOUT

that context would be more easily found in a marriage settlement than in any other document and, possibly, in a marriage settlement it would not exclude children unless there be some context in that direction.

There seems no doubt that “without being married” means without having a husband at the time spoken of (*Re Norman*, 22 L.J. Ch. 720). See hereon *Hardman v Maffett*, 13 L.R. Ir. 499; *Re Deane* [1900] 1 I.R. 333, which case followed *Hardman v Maffett* and distinguished *Stoddart v Savile*, above.

For an elaborate and carefully reasoned treatment by Mr Vaizey of the phrase, “As if she had died intestate and without having been married”: see 47 S.J. 64, 85, and 105.

Instead of “without having been married”, it is suggested that the phrase should be “without leaving a husband her surviving”.

Cp. UNMARRIED.

WITHOUT IMPEACHMENT OF WASTE. Where a term, life interest, or other qualified ownership is “without impeachment of waste”, such an owner is not liable for waste, and may do waste (other than equitable waste) and convert it at his own pleasure (*Bowles’ Case*, 11 Rep. 79).

Leases under s.46 of the Settled Estates Act 1877 (c.18), had to “be not made without impeachment of waste”; such a lease requiring the lessee to deliver up the premises in good repair, “fair wear and tear and damage by tempest excepted”, offended against that condition and was invalid; because a tenant for years, in the absence of stipulation, was liable even for permissive waste (*Yellowly v Gower*, 11 Ex. 274, below), from which such an exemption would have exempted him (per Kekewich J., *Davies v Davies*, 38 Ch. D. 499, adopting *Yellowly v Gower*, 11 Ex. 274, notwithstanding that in *Woodhouse v Walker*, 5 Q.B.D. 407, the point decided in *Yellowly v Gower* was treated as an open one; see also *Barnes v Dowling*, 44 L.T. 809. In Woodf. (24th edn), 739, *Yellowly v Gower* is spoken of “as having been too long accepted to be now overruled”).

See hereon *Downshire v Sandys*, 6 Ves. 107; *Termes de la Ley*, *Impeachment of Waste*.

See FULL AND ABSOLUTE; IMPEACHABLE; IMPEACHMENT; STRICT SETTLEMENT; WEAR AND TEAR.

WITHOUT INTERRUPTION. See INTERRUPTION.

WITHOUT ISSUE. See DIE WITHOUT ISSUE; LEAVING; *Re Milling’s Settlement* [1944] Ch. 263.

WITHOUT LAWFUL AUTHORITY. “The phrase ‘unlawful mooring’ as used in section 19 of the 1995 Act denotes a mooring in contravention of section 18 of the 1995 Act, such as to constitute a criminal offence under section 18 of the 1995 Act. It is a mooring in breach of the criminal law: and it is to be noted in that context the care taken in section 19(8) of the 1995 Act to ensure that a continued mooring after receipt of a notice served under section 19(1) is not, without more, to be unlawful in that sense. By contrast, the phrase ‘without lawful authority’ in section 8(1) of the 1983 Act focuses on the lack of lawful authority, not on breach of a regulation or provision regulating mooring (and constituting a criminal offence). The gist is not contravention, but lack of authority.” (*Moore v British Waterways Board* [2012] EWHC 182 (Ch).)

WITHOUT LEAVE. “Absence without leave”: see ABSENCE. Cp. WILFUL DISOBEDIENCE.

WITHOUT LEAVING ISSUE. See *Re Davey* [1915] 1 Ch. 837, cited ISSUE; DIE WITHOUT ISSUE; LEAVING.

WITHOUT MERIT. “[21] Before turning to the specifics of the present appeal it is right that I deal at the outset with a question which arose in the course of the hearing as to the proper understanding of the term ‘totally without merit’ in section 2(4)(a) of the [Legal Profession and Legal Aid (Scotland) Act 2007]. Senior counsel for the respondents advanced argument to the effect not merely that the words provided a low threshold for any claimant (a position with which I did not understand senior counsel for the appellants to disagree), but also that they fell to be understood as importing a notion of abuse of process. As it was put in the written argument, ‘The complaint should be rejected at this stage only where it is an abuse of the processes for investigation of complaints to allow it to continue’. The notion of abuse of process could be said, it was argued, to run through all parts of the language of section 2(4)(a). ‘Vexatious’ proceedings could be said to involve an abuse of the process of the court (Attorney General v Barker [2000] 1 FLR 759, Lord Bingham of Cornhill CJ at page 764). ‘Frivolous’ denoted something trivial, which did not merit consideration. As to ‘totally without merit’, some assistance could be gained from consideration of the English Civil Procedure Rules, by virtue of which the court has power to make civil restraint orders in circumstances where a claimant has made two or more claims that are totally without merit; a measure obviously intended to prevent a party from abusing the court process.

“[22] I am not persuaded by this argument. There are two problems with it, one general and one more specific. As to the first, it is always tempting but usually unhelpful to seek to put a gloss on the language of a statute, and I not think it helpful to seek to import notions of ‘abuse of process’ into the clear language of this Act. More specifically, such a concept invariably carries pejorative undertones, and if the respondents’ argument was correct, they would have, as senior counsel appeared to accept, no power to reject a complaint which was made in good faith but which was hopelessly misconceived—for example having been made under a genuine but complete misunderstanding of the role and duty of a solicitor, or of an advocate. Such a complaint, so senior counsel appeared to accept, would require nevertheless to be referred to the appellants, who in turn would require to investigate it and report. This, I consider, cannot have been Parliament’s intention in enacting section 2(4)(a).

“[23] That said, it is entirely clear from the language used, and the context in which it is used, that section 2(4)(a) does indeed provide a complainer with a low threshold to meet to avoid rejection of his or her complaint before investigation, (particularly perhaps in relation to a complaint of ‘unsatisfactory professional conduct’), and nothing that I say in the course of this opinion should be taken as suggesting anything else.” (*Law Society of Scotland v The Scottish Legal Complaints Commission* [2010] ScotCS CSIH 79.)

WITHOUT PREJUDICE. The general principle with regard to letters written “without prejudice” applies as much for the protection of a solicitor as for his client: see *La Roche v Armstrong* [1922] 1 K.B. 485.

The admissibility of letters written “without prejudice” is to be determined when the matter comes on to be heard, not on an application under the old R.S.C. Ord.38 r.11, now Ord.41 r.6: see *Re Jessopp*, 54 S.J. 543.

The whole of a negotiation is covered if its commencement is “without prejudice” (*Ex p. Harris*, 10 Ch. 264; *Thomson v Austen*, 2 D. & R. 361).

As to effect of “without prejudice” in a reply to a requisition on title: see *Morley v Cook*, 2 Hare, 106.

WITHOUT

Threat of legal proceedings (Patents, Designs and Trade Marks Act 1883 (c.57) s.32), “without prejudice”: see *Kurtz v Spence*, 57 L.J. Ch. 238, cited *THREAT*. See Patents Act 1949 (c.87) s.65.

A notice of suspension of payment (see *NOTICE*) is admissible as an act of bankruptcy, although given “without prejudice” (*Ex p. Holt, Re Daintrey* [1893] 2 Q.B. 116).

In a power in a charterparty to give bills of lading, “the meaning of ‘without prejudice to the charterparty’ has been settled by *Shand v Sanderson* (28 L.J. Ex. 278) and *Gledstanes v Allen* (12 C.B. 202), and is that, notwithstanding any engagements made by the bills of lading, the contract between the parties to the charter is to stand unaltered” (per Esher M.R., *Hansen v Harrold* [1894] 1 Q.B. 612), and this definition was applied in *Turner v Haji Goolam Mahomed Azam* [1904] A.C. 837; cp. *CONDITIONS AS PER CHARTERPARTY*; *Wilson v Playle*, 88 L.T. 554, cited *WRITTEN WARRANTY*. See further *Reynolds v Jex*, 34 L.J.Q.B. 251; *The Canada*, 13 T.L.R. 238.

For the meaning of the phrase “without prejudice to the remedies of either of the parties hereto”, in a lease, see *Burch v Farrow's Bank Ltd* [1917] 1 Ch. 606.

Where negotiations for the settlement of a valuation case take place “without prejudice”, any offer made must be disregarded as evidence of value (*Dundee Assessor v Elder* (1962) 4 R.I.C.S. 39 (No.104)).

The privilege attached to “without prejudice” correspondence ceases if and when the protected negotiations achieve their object in reaching a settlement. So that, where a plaintiff brought an action against two defendants, the “without prejudice” correspondence which had passed between the plaintiff and one of the defendants, and had resulted in a settlement of their claims, thereafter ceased to be privileged and became available to the other defendants (*Rush and Tompkins v Greater London Council* [1988] 3 W.L.R. 939).

“Without prejudice” had more than one meaning depending upon the context in which it was used. When used in the compromise process it usually appeared in the heading of a letter rather than in the body of the text. Where it appeared in the text of a letter it did not indicate the commencement of litigation but merely indicated an intention to seek compromise without giving up the right to seek redress through the courts (*Peterborough City Council v Mancetter Developments* [1996] E.G.C.S. 50).

The without prejudice privilege does not apply to communications which are apparently open and which are designed to discuss the repayment of an admitted liability (*Bradford & Bingley Plc v Rashid* [2006] UKHL 37; see also *Ofulue v Bossert* [2009] UKHL 16).

“When construing a contract between two parties, evidence of facts within their common knowledge is admissible where those facts have a bearing on the meaning that should be given to the words of the contract. This is so even where the knowledge of those facts is conveyed by one party to the other in the course of negotiations that are conducted ‘without prejudice’. This principle applies both in the case of a contract that results from the without prejudice negotiations and in the case of any other subsequent contract concluded between the same parties.” (*Oceanbulk Shipping & Trading SA v TMT Asia Ltd* [2010] UKSC 44.)

See also *PRIVILEGED COMMUNICATION*.

See *WITHOUT AFFECTING*.

“The classic statement of the law was contained in Lord Griffiths’ speech (with whom the rest of the Committee agreed) in *Rush & Tomkins v. GLC* [1989] 1 AC 1280

at pages 1299-1300 as follows:- ‘The “without prejudice” rule is a rule governing the admissibility of evidence and is founded upon the public policy of encouraging litigants to settle their differences rather than litigate them to a finish ... The rule applies to exclude all negotiations genuinely aimed at settlement whether oral or in writing from being given in evidence. A competent solicitor will always head any negotiating correspondence “without prejudice” to make clear beyond doubt that in the event of the negotiations being unsuccessful they are not to be referred to at the subsequent trial. However, the application of the rule is not dependent upon the use of the phrase “without prejudice” and if it is clear from the surrounding circumstances that the parties were seeking to compromise the action, evidence of the content of those negotiations will, as a general rule, not be admissible at the trial and cannot be used to establish an admission or partial admission’ . . . It is common ground that this requires the court to consider the circumstances of the communications from an objective standpoint, despite some early authorities to the contrary (see *Phipson on Evidence* 18th edition, 2013, at paragraph 24-13(d) and Bodey J in *BE v. DE* [2014] EWHC 2318 (Fam) at paragraphs 20-22). Bodey J added an important qualification at paragraph 24 of his judgment in *BE v. DE* to the effect that ‘[i]t must be necessary ... that both parties realised or must or should have realised [that the parties were seeking to compromise the dispute], not just the person now praying in aid the without prejudice protection’ . . . In my judgment, the true question is whether the discussions were or ought to have been seen by both parties as ‘negotiations genuinely aimed at settlement’ within the principles stated above. The judge plainly took a narrow view of the kind of discussions that might be properly so regarded. In my judgment, a broader view is now authoritatively required.” (*Suh v Mace (UK) Ltd* [2016] EWCA Civ 4.)

WITHOUT PREJUDICE TO THE GENERALITY. “On the other hand, a statute can be passed with the deliberate Parliamentary intention that it is to be applied in a range of circumstances not necessarily foreseen or contemplated at the time it is passed. The words ‘without prejudice to the generality’ seem to me to convey that approach.” (*Shanks (t/a Blue Line Taxis), R. (on the application of) v The Council of the County of Northumberland* [2012] EWHC 1539 (Admin).)

WITHOUT PRIOR NOTICE. “Without prior notice” in a contract of employment should be construed as meaning “without advance notice” (*Bainbridge v Circuit Foil UK Ltd, The Times*, February 26, 1997).

WITHOUT REASONABLE EXCUSE. “It is recognised that the 2003 Act contains no definition of the words ‘reasonable excuse’. Accordingly one is therefore required to approach the expression by attributing to it its ordinary meaning, having regard to the words used, drawing such assistance as may be available from decisions upon similar language used elsewhere. The word ‘excuse’ does not itself present any difficulty, meaning simply that which is offered as a reason for being excused. However, in the context, the word ‘reasonable’ is of importance. To our mind, the use of that word indicates that Parliament intended that the excuse should possess some objectively recognisable justification. Following that approach, the mere making of an assumption about a state of facts based on a highly questionable inference could not amount to a ‘reasonable excuse’. A number of authorities were cited to us by the Advocate depute in relation to this issue, which possess some, although limited, value, since they deal with differing language. However, we derived some assistance from *HMA v Hoggan*, which was concerned with the meaning of the words ‘reasonable cause to believe’ occurring in section 5 of the Criminal Law Amendment Act 1885.

WITHOUT

There the Lord Justice Clerk took the view that the appearance of a girl could not constitute such 'reasonable cause'. That view was affirmed in *HMA v Macdonald* by Lord McLaren. His view was that 'no defence can be founded upon impressions formed from the appearance of the girl'. He went on to say: 'It must not be mere supposition on the part of the accused; it must be that he formed the opinion upon information or other intelligible and reasonable grounds of belief.'" (*McMillan v HM Advocate* [2010] Scot. H.C. HCJAC 103.)

See *R v Nicholson* [2006] EWCA Crim 1518.

WITHOUT REASONABLE OR PROBABLE CAUSE. See DEMAND.

WITHOUT RECOURSE. See SANS RECOURS.

WITHOUT RESERVE. When an auction is advertised as being made "without reserve", the vendor cannot bid; and if he bids, or employs anyone to bid, the sale is void at the election of the purchaser (*Meadows v Tanner*, 5 Mad. 34; *Thornett v Haines*, 15 L.J. Ex. 230; *Robinson v Wall*, 16 L.J. Ch. 401; *Warlow v Harrison*, 29 L.J.Q.B. 14. See also Sale of Land by Auction Act 1867 (30 & 31 Vict., c.48) ss.4, 5).

But in *Warlow v Harrison* (above) the majority of the court (Martin and Watson BB. and Byles J.) went further, and held that an auctioneer who puts up property for sale "without reserve" "pledges himself that the sale shall be without reserve, or (in other words) contracts that it shall be so; and that this contract is made with the highest bona fide bidder, and in case of a breach of it that he has a right of action against the auctioneer". But, though this was a decision of the Exchequer Chamber, Blackburn J., in delivering the judgment of the Queen's Bench in *Mainprice v Westley* (34 L.J.Q.B. 229), pointed out that the ultimate decision in *Warlow v Harrison* turned rather on a matter of pleading and said, "We do not think, therefore, that we are precluded by it as a judgment of a court of error"; and accordingly in *Mainprice v Westley* the court, without saying whether or not the vendor would be liable "as for a breach of contract" if he authorised biddings in a "peremptory" sale, held, that the auctioneer at such sale would not be liable when acting without deceit and professedly only as an agent; but see as to the auctioneer's liability generally, *Williams v Millington*, 1 Bl. H. 81, applied in *Woolfe v Horne*, 2 Q.B.D. 355, which last case was preferred to *Mainprice v Westley* (above) in *Rainbow v Howkins* [1904] 2 K.B. 322; *McManus v Fortescue* [1907] 2 K.B. 1.

The authority of *Warlow v Harrison* on the question whether a "peremptory" sale, or a sale "without reserve", gives positive contractual rights, was further impaired by *Harris v Nickerson* (L.R. 8 Q.B. 286), in which it was held that an advertisement of an intended auction gives no contractual rights to persons who are put to expense in travelling to attend the auction, and who are disappointed by reason of the sale being at the last moment withdrawn (Add. C. 12). In that case Quain J. said, "*Warlow v Harrison* has not been considered a satisfactory decision". If no contractual rights arise by reason of the withdrawal of an auction, it seems difficult to see how the case is altered, in favour of the highest bona fide bidder who must be unknown at the commencement of the sale, by the sale being advertised as "peremptory" or "without reserve". A sale "without reserve" might, it seems clear, be withdrawn altogether. If it proceeds, why may it not be withdrawn at any time until an actual contract is made? And if it may be so withdrawn, how can contractual rights arise in favour of one of what may be a large company when all that can be said is that his bidding is prevented from being the highest, and he himself is prevented from being a contracting party, by the intervention of the intending vendor? But see Add. C. 445.

Semble, unless a sale is expressed to be “without reserve” it is implied that there will be a reserve price (*Mortimer v Bell*, 34 L.J. Ch. 360).

By s.58(4) of the Sale of Goods Act 1893 (c.71), an auction of goods “may be notified to be subject to a reserved or upset price”; but, semble, a reserved price unnotified is not prohibited or penalised, nor are the cases cited above on “without reserve” affected.

Sale to “highest bidder”: see HIGHEST.

See RESERVED BIDDING.

WITHOUT RISK. Where a lighter was let out “without risk of craft” and the goods on board were damaged by sea-water, the owner was held not liable for the loss (*Webster v Bond*, Cab. & El. 339). In that case, Mathew J. said, “I think the words ‘without risk of craft’ mean without risk or liability to the owner of the craft”. See RISK.

Investments to be made “without risk to the trustees”: see *Rochfort v Seaton* [1896] 1 I.R. 18.

WITHOUT SUFFICIENT CAUSE. See SUFFICIENT CAUSE.

WITHOUT SUPPORT. (Coal Mining Subsidence Act 1991 (c.45) ss.1(1), 2(1).) “Withdrawal of support” could cover passive as well as active loss of support so that subsidence caused by the shifting of infill in a site previously used for lawful coal-mining operations could result in the loss of support to land to found liability under s.2(1) (*British Coal Corp v Netherlee Trust Trustees* (1995) S.L.T. 1038).

WITNESS. The witness to an instrument requiring attestation must not be a party thereto (*Seal v Claridge*, 7 Q.B.D. 516; *Re Parrot, Ex p. Cullen* [1891] 2 Q.B. 151).

A blind person cannot be a witness to the signing of a will (*Re Gibson* [1949] P. 434).

“Solely on the evidence of one witness” (Perjury Act 1911 (c.6) s.13). Two witnesses who testified to having heard the defendant admit falsity did not become “one witness” for the purposes of this section by virtue of the fact that they heard him on the same occasion (*R. v Peach* [1990] 1 W.L.R. 976).

Stat. Def., Prosecution of Offences Act 1985 (c.23) s.21.

“To witness”: see ATTEST.

Stat. Def., Costs in Criminal Cases Act 1952 (c.48) ss.1, 5; Courts Act 1971 (c.23) s.47(7).

Stat. Def., in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence at the trial or hearing in question (Coroners and Justice Act 2009 s.97).

See COMPELLABLE; COMPETENT; CREDIBLE WITNESS; PROFESSIONAL WITNESS.

WITTINGLY. Where a statutory offence is for something done “wittingly, willingly, or knowingly”, those words denote that the act must be “done with a conscious mind that the party is doing wrong” (per Tenterden C.J., *Meirelles v Banning*, 2 B. & Ad. 909).

WOMAN. A power to A of jointuring “any woman he may marry” may be exercised in favour of a woman married to him during his divorced first wife’s lifetime, although he had already appointed a jointure to such first wife (*Marlborough v Marlborough* [1901] 1 Ch. 165).

“Married woman”: see MARRY.

When woman presumed past childbearing: see PRESUMPTION.

“Womanly delicacy”: see DELICACY.

WOMEN'S

Stat. Def., Factories Act 1961 (c.34) s.176(1); Equal Pay Act 1970 (c.41) s.11.

Stat. Def., Equality Act 2010 s.212.

See FEME; GIRL; MAN; LEGAL INCAPACITY; NEIFE; PROHIBITED; WAIVE; YOUNG PERSON; FEMALE; MALE; SEX.

WOMEN'S SANITARY PRODUCTS. Stat. Def., Sch.7A Note 4 to the Value Added Tax Act 1994 (c.23), inserted by Sch.31(1) to the Finance Act 2001 (c.9).

WOOD; WOODS. "Wood, *boscus*, contains timber or hautboys and underwood or subboscus. Both the trees and the soil itself on which they stand pass by the grant of a wood or boscus (Co. Litt. 4B; see hereon *Doe d. Kinglake v Beviss* 18 L.J.C.P. 128; SEA GROUNDS). In like manner by an exception in a lease of the woods and underwoods growing or being on the property demised, the soil itself on which they grow is excepted (*Ive's Case* 5 Rep. 11 a; *Hide v Whistler* Pop. 146; *Whistler v Paslowe* Cro. Jac. 487). On the other hand, by an exception of 'trees' (*Liford's Case* 11 Rep. 46 b), 'saleable underwoods' now growing on the premises (*Pincombe v Thomas* Cro. Jac. 524), the soil itself is not excepted. See *Glover v Andrew* 1 And. 7" (Elph. 631). But in *Legh v Heald* (1 B. & Ad. 622) it was pointed out that in *Whistler v Paslowe* (above) the lease was of a manor, and (referring to the proposition for which *Liford's Case* is above cited) it was held in *Legh v Heald* that, where the leading words of the clause were "timber and other trees" which were followed by "wood and underwoods", the soil was not included in the latter phrase.

See further TREES; SEASONABLE WOOD; Touch. 94, 95; *Stanley v White*, 14 East, 332; see also ORNAMENTAL TIMBER; TIMBER.

Lease of "woods, groves, hedgerows, and springs", by a chapter, that had no right to fell timber except for repairs, gave lessee no right to fell timber (*Herring v St. Paul's*, 3 Swanst. 492). See further TIMBER.

By a lease of "woods and underwoods" upon premises demised, with the right to cut down and carry away the same, hedgerows pass (4 Leon. 36).

Profits of a wood: see *Anon*, 4 Leon. 8, cited PROFITS.

A statutory power to a company to "pave with wood" certain portions of the roads does not authorise it to create a nuisance by using blocks of wood impregnated with creosote: see *Ward v Bristol Tramways Co* [1908] 2 K.B. 14.

"Woods and forests": Stat. Def., Forestry (Transfer of Woods) Act 1923 (c.21) s.7.

"Woodland": Stat. Def., Rating and Valuation Act 1925 (c.90) s.68; Agriculture Act 1967 (c.22) s.57.

WOODGELD. "'Woodgeld' seemeth to bee the gathering or cutting of wood within the forrest, or money payd for the same to the forresters. And the immunity from this by the Kings grant is, by Crompt. f. 197, called woodgeld" (Termes de la Ley).

WOODLAND. Stat. Def., Deer (Scotland Act) 1996 (c.58) s.45(1).

Stat. Def., Income Tax Act 2007 s.996(4); Corporation Tax Act 2009 s.1317.

WOOLLEN. See MATERIALS.

WORD. "Word" (Patents, Designs, and Trade Marks Act 1883 s.64(e), amended by Act of 1888 (c.50) s.10) includes words in foreign characters, e.g. Burmese (*Re Dewhurst* [1896] 2 Ch. 137), or the name of an imaginary person, e.g. Trilby (*Re Holt* [1896] 1 Ch. 711, Kay, L.J. dissenting). See Trade Marks Act 1938 (c.22) s.9. See DISTINCTIVE; FANCY WORD; INDIVIDUAL; SPECIAL; TRADE MARK.

WORDS. "Words or behaviour" (Public Order Act 1986 (c.64) s.5(1)(a)). Delivering a letter to another, who opened it in the absence of the sender, was not using "words" within the meaning of this section (*Chappell v DPP* [1989] C.O.D. 259).

Stat. Def., Defamation Act 1952 (c.66) s.16(1); Theatres Act 1968 (c.54) s.4(3).

See GENERAL WORDS.

WORDS OF ART. "Words of art" are those words which have a definite and fixed legal meaning, and for which so-called equivalents are seldom admitted, and which are only with difficulty controlled by the context, e.g. BURGLARY; FELONY; MURDER; RAPE; RAVISH; REAL ESTATE; REMAINDER; SEIZED; SEIZIN; SEPARATE COVENANT; TAKE AND CARRY AWAY; TRUE BILL. See further APPOINT; BENEFICIAL; *Long Eaton Recreation Grounds Co v Midland Railway* [1902] K.B. 574, cited BUILDING.

WORK. See LABOUR; WAGES.

"The word 'work' may be used in two senses; it may mean either the labour which a man bestows upon a thing, or the thing upon which the labour is bestowed" (per Collins M.R., *Atkinson v Lumb* [1903] 1 K.B. 861, cited ENGINEERING WORK). See further *Bromley Rural Council v Croydon, Carlisle Rural Council v Carlisle* [1909] 1 K.B. 471; *Reigate Rural Council v Sutton Water Co*, 78 L.J.K.B. 315, both cited COMPLETION.

A roof providing access to windows may be a place where a window-cleaner "has to work" within s.26(1) of the Factories Act 1937 (c.67), now Factories Act 1961 (c.34) s.29(1) (*Lavender v Diamints* [1949] 1 K.B. 585).

The heating of water in a boiler room is not a "process of work" within ss.4(1) and 47(1) of the Factories Act 1937 (c.67), now ss.4(1) and 63(1) of the 1961 Act, nor is the boiler room a "workroom" within s.4(1) (*Brophy v J. C. Bradfield & Co* [1955] 1 W.L.R. 1148).

"Work" (Railway Rolling Stock Protection Act 1872 (c.50) ss.2, 3) covered any establishment or place (used for the purpose of trade or manufacture) connected with a line of railway by sidings along which the rolling stock might be propelled (*Easton Estate Co v Western Waggon Co*, 54 L.T. 735). In this connection, it will be observed that "work" had a meaning similar to "WORKS".

"Work is being carried on" (Docks Regulations 1934 (SI 1934/279) reg.11(1)). The word "work" meant work on the various processes covered by Pt II of the Regulations and included loading and unloading (*Mace v Green (R.H.) and Silley Weir* [1959] 2 Q.B. 14).

"Work is being carried on" (Shipbuilding Regulations 1931 (No.133) reg.42 (a)) means work of actual construction or repair on the ship, and does not cover the activities of a night watchman (*Opie v Falmouth Docks and Engineering Co* [1961] 1 Lloyd's Rep. 38).

Finance Act 1941 (c.30) s.23: does not include the unpaid work of a housewife (*Phillips v Emery*, 62 T.L.R. 68).

"Work of construction": see *Hobbs v Bradley*, 37 Sc. L.R. 532, cited ENGINEERING WORK.

"Structure or work": see STRUCTURE. See further *Charing Cross & Strand Electricity Corp v Woodthorpe*, 88 L.T. 772, cited STRUCTURE.

"Work", within the meaning of proviso to s.3 of the Copyright Act 1911 (c.46): see *Osborne v Dent & Sons Ltd* [1925] 1 Ch. 369.

"Work . . . so altered" (Fine Arts Copyright Act 1862 (c.68) s.7): see *Preston v Raphael Tuck & Sons Ltd*, 95 L.J. Ch. 382.

"Work of a particular kind" (Redundancy Payments Act 1965 (c.62) s.1(2)(b), now Employment Protection (Consolidation) Act 1978 (c.44) s.81(2)(b)). Work on stainless steel was not "work of a particular kind" under this section in a case where those who had been engaged on it before it ceased were offered work on black metal (*Amos, Vassal and Fowler v Max-Arc* [1973] I.R.L.R. 286). Work during particular hours was held not to be "work of a particular kind"; so that a request that an employee do the same work but at a different time did not denote a diminution in the requirements for employees to do "work of a particular kind" (*Johnson v Nottingham Combined Police Authority; Dutton v Same* [1974] I.C.R. 170). This case had to be "distinguished" in two subsequent cases where it was held that a request to an employee to switch from a night shift to a day shift *did* denote a diminution in the requirements for employees to do "work of a particular kind" within the meaning of this section (*Squibb v Shepperton Studios, Industrial Tribunal*, May, 7 1974; *Kykot v Smith Hartley* [1975] I.R.L.R. 372). See also *Lesney Product v Nolan* [1977] I.C.R. 235. Work as an operations manager responsible to a general manager was held to be "work of a particular kind" for the purposes of this section, and when the two posts were merged the resulting job, being more complex than either of the two previous jobs and requiring different qualities, was held to be work of a different kind (*Robinson v British Island Airways* [1978] I.C.R. 304). A man employed as a divisional contracts surveyor under a contract of employment which required him to do any and all duties, which reasonably fell within the scope of his capabilities was employed to do "work of a particular kind" within the meaning of this section, and when, through a diminution in the work he was required to do, he was dismissed, and his employer had no right to require him to do any other work, he became redundant under this section (*Cowen v Haden* [1983] I.C.R. 1). Work on a night shift can be work of a particular kind within the meaning of s.81(2)(b) (*Macfisheries v Findlay* [1985] I.C.R. 160).

It is not necessary that there should be remuneration for an activity for it to qualify as "work" for the purposes of claims under the Supplementary Benefits Act 1976 (c.71) (*Cleat v Smith* [1981] 1 W.L.R. 399). In the context of a prosecution for claiming sickness benefit while working it is not necessary that the work in question should be manual labour. Supervising and organising others could be "work" under the social security legislation. (*Industrial Tribunal Decision No.R(s) 2/80*).

"Works or uses any plant or equipment" (Construction (General Provisions) Regulations 1961 (SI 1961/1580) reg.3 (1)). These words cover not only the industrial operation of a machine for its designed purpose, but also any operation of it for any purpose which involves activating it (*Johns v Martin Simms (Cheltenham)* [1983] 1 All E.R. 127).

"Incapable of work in consequence of sickness" (Employment Protection (Consolidation) Act 1978 (c.44) Sch.13 para.9(1)(a)). The words "incapable of work" refer to the type of work which had been carried out by the employee prior to any interruption in continuity; so that, although he had undertaken a different sort of work during the period of interruption, he could still be "incapable of work in consequence of sickness" for the purposes of this paragraph (*Donnelly v Kelvin International Services* [1992] I.R.L.R. 496).

"Place of work" (Local Government Act 1972 (c.70) s.79(1)(c)). The word "work" for the purposes of this section is to be given its ordinary meaning and could, therefore, include duties performed as a councillor (*Parker v Yeo* [1992] 90 L.G.R. 645).

(Race Relations Act 1976 (c.74) s.7.) Work done by the employees of concessionaires operating within a department store was work done for the store, in that it was work done for the benefit of the store and ultimately under the store's control (*Harrods Ltd v Remick* [1996] I.C.R. 846).

(Treaty of Rome 1957 art.119.) Attendance at the annual conference of a union was not "work" in the usual sense, in that the employer had no control over the employee's activities whilst at the conference (*Arbeiterwohlfaht der Stadt Berlin EV v Botel*) (C360/90) [1992] I.R.L.R. 423 distinguished) (*Manor Bakeries Ltd v Nazir* [1996] I.R.L.R. 604).

(Race Relations Act 1976 (c.74) s.7.) The employees of franchisees, who provided individuals to work in a large department store, worked for the store as well as for their employers, so that the store could be liable under the 1976 Act for acts of unlawful discrimination as principal (*Harrods Ltd v Remick* [1998] I.C.R. 156).

In reg.14a(1)(a) of Council Regulation (EEC) No.1408/71 a reference for social security purposes to a person normally self-employed in one member state "who performs work" in another state included a reference to any performance of work, whether in employment or self-employment (*Banks v Theatre Royal de la Monnaie* (Case C-178/97) [2000] 3 W.L.R. 1069, ECJ).

"In work": a person was "in remunerative work" even during a period of school holidays for which he was not paid, because his employment followed a "recognisable cycle of work" of one school year (*Banks v Chief Adjudication Officer* [2001] 1 W.L.R. 1411, HL; [2001] 4 All E.R. 62, HL).

See also AT WORK; TEMPORARY para.(5).

"Work of repair": see REPAIR.

"Work of charity": see CHARITY.

"Literary work": see LITERARY; PERIODICAL.

"Work of mercy": see MERCY.

"Works of artistic craftsmanship": see ARTISTIC.

"Necessary work": see NECESSARY.

"Work of necessity": see NECESSITY.

"Workplace": see WORK PLACE.

"Sanitary work": see SANITARY.

"Work and maintain" a railway: see MAINTAIN.

"'Manufacture' and 'work'": see MANUFACTURE.

Stat. Def., Social Security Act 1975 (c.14) ss.17, 56; Highways Act 1980 (c.66) s.291(4).

"Work permit": Stat. Def., Immigration Act 1971 (c.77) s.33.

Distinguished from employment: see EMPLOYMENT.

"A point which needs to be borne in mind is that the United Kingdom copyright legislation uses the term 'work' comprehensively to include both Berne Convention works (literary, dramatic, musical and artistic works, including film) as well as related subject matter such as broadcasts. As a consequence, it also identified an author of the related subject matter, although the term author in these cases requires technical definition in the case of broadcasts and other related subject matter. That approach is

not adopted in EU legislation, as the contrasts between recitals (23) and (24), between Articles 2(a) and 2 (b) to (e), and between Article 3(1) and 3(2) of the InfoSoc Directive show.” (*ITV Broadcasting Ltd v TV Catchup Ltd* [2011] EWHC 1874 (Pat).)

See FROM HIS WORK; PUBLIC WORK; WORKS; WORLDLY LABOUR; WORKING PLACE; ENGAGED; REMUNERATION; TEMPORARY; SAME SERVICE.

WORK EQUIPMENT. A ramp was not work equipment for the purposes of the Provision and Use of Work Equipment Regulations 1998 (*Smith v Northamptonshire County Council* [2008] EWCA Civ 181).

A door closer is work equipment capable of being “used” for the purposes of the Provision and Use of Work Equipment Regulations 1998 (*Spencer-Franks v Kellogg Brown and Root Ltd* [2008] UKHL 46).

“Counsel for the appellant argued that once it was established that this was work equipment for cleaners/housekeepers employed by the defenders, then it became work equipment for the appellant. There are two flaws in this argument. First, the wardrobe (and the pole within) was not in the lodge for use at work, even by cleaners or housekeepers. It does not follow that because an item is cleaned by a cleaner that its practical purpose is for use at work by the cleaner. The walls and floors of a place of work may require to be cleaned, but that fact does not render them ‘work equipment’ for the purpose of regulation 2(1)—*Smith v Northamptonshire County Council* at paragraph [21]; *Spencer-Franks* at paragraphs [52/53]. Second, an item may be “work equipment” when it is being used at work, but may not be ‘work equipment’ when it is being used away from work. A company car used for an entirely private journey (possibly not even by the employee) or the tools of an employed or self-employed builders trade which he uses at home to repair his own sink—these may be work equipment when used at work at one time, but not when used at another time when not at work—*Spencer-Franks* per Lord Mance at paragraph [84], and per Lord Rodger at paragraph [51]. Even if (contrary to the view expressed above) the wardrobe and the pole within were items of work equipment for cleaners/housekeepers when they were cleaning the lodge, on the evidence before the sheriff no cleaners or housekeepers came into the lodge when there were no paying guests using it, and when it was simply being occupied in return for payment by an employee. When the appellant was occupying the lodge (as he was at the time of the accident) there were no other employees of the defenders who had any occasion to come into contact with the wardrobe or the pole within. It follows (like the company car being driven for an entirely personal reason, perhaps by someone other than an employee) that, at least while the lodge was being occupied by the appellant, the wardrobe and the pole within were not work equipment.” (*Coia v Portavadie Estates Ltd* [2015] ScotCS CSIH 3.)

WORK IN PROGRESS. Stat. Def., Finance (No.2) Act 1975 (c.45) Sch.10 para.17; Finance Act 1976 (c.40) Sch.5 para.30.

WORK-RELATED ACTIVITY. Stat. Def., Welfare Reform Act 2007 s.13(7).

WORKABLE. “An agreement to work a mine as long as it is ‘fairly workable’ does not oblige the tenant to work it at a dead loss (*Jones v Shears* 7 C. & P. 346); nor does a covenant to ‘get the demised clay to the fullest practicable extent consistent with the means of sale of bricks and tiles to be derived therefrom’, although a means of sale at an unremunerative rate might be found (per Denman J., *Newton v Nock* 43 L.T. 197); but an agreement to work ‘in the most proper and effective manner’ is broken by a cessation from working, although the dead rent be paid (*Kinsman v Jackson* 42 L.T. 80, 558. The dictum of Malins V.C., *Wheatley v Westminster Brymbo Coal Co* L.R. 9

Eq. 538, that it is enough if the dead rent be paid, would seem not to be law: see per Jessel M.R., 42 L.T. 558). 'Coal seams workable as coal seams' means workable at a profit, including the coal and fire clay, etc. to which the tenant is entitled (*Carr v Benson* 3 Ch. 524)"; Woodf. (24th edn), 612.

As to construction of covenants to work mines, see further *R. v Bedworth*, 8 East, 387; *Bute v Thompson*, 14 L.J. Ex. 95; *Clifford v Watts*, L.R. 5 C.P. 577; *Jervis v Tomkinson*, 26 L.J. Ex. 41; *Foley v Addenbrooke*, 14 L.J. Ex. 169; *Quarrington v Arthur*, 11 L.J. Ex. 418; *Doe d. Bryan v Bancks*, 4 B. & Ald. 401; *Cartwright v Forman*, 7 B. & S. 243; Woodf. (24th edn), 527, 695, 764; MacS. (5th edn), 133, 139; WIN; WORTH THE EXPENSE. See also *Jackson's Trustee v Dixon*, 38 Sc. L.R. 587, cited FAIRLY; PROFITABLE; *Watson v Charlesworth* [1905] 1 K.B. 74, cited WIN.

In the expression "workable hatch", "workable" is intended to describe the state of a hatch that can still be worked because its hold is not yet full (*Compania de Navigacion Zita SA v Louis Dreyfus and Comagnie* [1953] 1 W.L.R. 1399).

Cp. WROUGHT.

WORKED. Vessels "rowed or worked" may be propelled by steam (per Littledale J., *Tisdell v Combe*, 7 A. & E. 796).

So, a barge having no motive power of its own but which was towed by a steamer, was being "worked and navigated" within s.66 of the Watermen's and Lightermen's Amendment Act 1859 (c. cxxxiii) (*Elmore v Hunter*, 3 C.P.D. 116).

But attaching a steamboat to 31 barges, which had been collected about 100 yards from Victoria Dock, and so taking them altogether into the dock, was held not a "navigating" of the steamboat "on the river" within a bye-law under the Act just mentioned which prohibited any person "navigating any steamboat on the river" to tow more than six craft (*Rolles v Newell*, 25 Q.B.D. 335, followed in *Gardner v Doe* [1906] 2 K.B. 171).

By the Rules under Coal Mines Act 1854 (c.108) s.4, an adequate ventilation was required to be "constantly" produced at all collieries, and s.11 imposed a penalty if any colliery was "worked" contrary to rules; held, that a colliery in full operation on weekdays was also being "worked" during the suspension of actual work between Saturday and Monday morning (*Knowles v Dickinson*, 29 L.J.M.C. 135).

WORKER. "Worker or maker" of goods: see MAKER.

"Worker" (Defence (General) Regulations 1939 reg.58A para.4(A)) was held to cover managing director of a company (*Trussed Concrete Steel Co v Green* [1946] Ch. 115).

A man who occupied as tenant part of the premises of a company by whom he was supplied with materials for further processing under contracts, and who employed and paid his own employee, was not a "worker" within the meaning of s.23(1) of the Wages Councils Act 1945 (c.17) (*Westall Richardson v Roulson* [1954] 1 W.L.R. 905).

"Worker" (Industrial Relations Act 1971 (c.72) s.167) includes a part-time collector for a football pools firm (*Broadbent v Crisp*, *The Times*, December 3, 1973). But did not include the writer of original dramatic material for the BBC (*Writers' Guild of Great Britain v BBC* [1974] I.C.R. 234). The essential question was whether the contract left a party free to delegate the performance of the work or services to somebody else or whether he had to perform it himself. If a man's obligation involved personal performance he would be a "worker" within the meaning of this section (*Broadbent v Crisp* [1974] I.C.R. 248).

WORKER

“Workers to whom the issue relates” (Employment Protection Act 1975 (c.71) s.14(1)). Workers dismissed while on strike, but who desire to return to work after the settlement of the dispute are “workers” within the meaning of this section although no longer employed by the company (*Grunwick Processing Laboratories v Advisory Conciliation and Arbitration Service* [1978] 1 All E.R. 338).

A student is not a “worker” within the meaning of art.7(2) of Council Regulation (EEC) No.1612/68 (*MacMahon v Department of Education and Science* [1982] 3 W.L.R. 1129).

Persons involved in activities carried out in the context of a rehabilitation or retraining scheme for persons who were otherwise not capable of finding employment could not be regarded as “workers” within the meaning of art.48 of the EEC Treaty (*Bettray v Staatssecretaris van Justitie* (No.344/89) [1989] E.C.R. 1621); see also, as to meaning in EEC Treaty art.48, *Raulin v Minister van Onderwijs en Wetenschappen* [1994] 1 C.M.L.R. 227.

A wife who undertook the care of her paraplegic husband but had neither given up work nor abandoned any attempts to seek work when she began to care for him, was not a member of the “working population” within the Council Directive 79/7 in equal treatment for men and women in matters of social security, art.2 (*Zuchner v Handelskrankenkasse (Ersatzkasse) Bremen* (C77/95), *The Times*, December 9, 1996).

A pupil barrister was not a “worker” for the purposes of the meaning of the National Minimum Wage Act 1998 (c.39) (*Edmonds v Lawson* [2000] 2 W.L.R. 1091, CA).

For the purposes of European Community law and the freedom of movement of workers, a professional player of basketball was a worker. The essence of the test was whether the worker agreed to perform services for a certain period of time for and under the direction of an employer in return for remuneration. The test was satisfied by a player who had signed a contract of employment with a basketball club (*Jyri Lehtonen v FRBSB* [2000] 3 C.M.L.R. 409, ECJ).

A paper boy aged 15 who was still at school and who delivered newspapers six days a week was not a “worker” within the meaning of reg.2 of the Working Time Regulations (SI 1998/1833) and was therefore not entitled to paid holidays. (*Addison (trading as Brayton News) v Ashby*, T.L.R., January 24, 2003, EAT).

For a case in which freelance operatives were held to be workers for the purposes of the Trade Union and Labour Relations Act 1999, see *R. (BBC) v Central Arbitration Committee*, T.L.R., June 12, 2003, Q.B.D.

For wide construction in an EU context of “worker”, see *Ninni-Orasche v Bundesminister Fur Wissenschaft, Verkehr und Kunst* [2004] 1 C.M.L.R. 19, ECJ. The concept is to be defined by reference to the rights and duties concerned, with specific reference to whether a person performs services under the direction of another in return for remuneration, whether for a short or long period.

Bricklayers operating under contracts by virtue of which it was clearly intended that the work specified would be undertaken by them personally were workers for the purposes of the Working Time Regulations 1998. (*Wright v Redrow Homes (Yorkshire) Ltd* [2004] 3 All E.R. 98, CA).

“15 As the Court has held, the concept of ‘worker’ within the meaning of Article 39 EC has a specific Community meaning and must not be interpreted narrowly. Any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a ‘worker’. The essential feature of an employment relationship is,

according to that case-law, that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration (see, in particular, *Lawrie-Blum* (Case 66/85) [1986] E.C.R. 2121, paras 16 and 17, and *Collins* (Case C-138/02) [2004] E.C.R. I-2703, para.26).

“16 Moreover, neither the *sui generis* nature of the employment relationship under national law, nor the level of productivity of the person concerned, the origin of the funds from which the remuneration is paid or the limited amount of the remuneration can have any consequence in regard to whether or not the person is a worker for the purposes of Community law (see *Levin* (Case 53/81) [1982] E.C.R. 1035, para.16; *Bettray* (Case 344/87) [1989] E.C.R. 1621, paras 15 and 16; and *Kurz* (Case C-188/00) [2002] E.C.R. I-10691, para.32)” (*Trojani v CPAS* [2004] 3 C.M.L.R. 38, ECJ).

For a legal trainee as a worker, see *Kranemann v Land Nordrhein-Westfalen* (Case C-109/04) [2005] 2 C.M.L.R. 15.

For students as workers, see *Ozturk v Secretary of State for the Home Department* [2005] EWHC 1433 (Admin).

Work as an au pair may qualify a person as a worker (*R. (on the application of Payir) v Secretary of State for the Home Department* [2005] EWHC 1426 (Admin)).

Stat. Def., Wages Act 1986 (c.48) ss.8, 26; Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) s.296.

Stat. Def., Trade Union and Labour Relations Act 1974 (c.52) s.30; Restrictive Trade Practices Act 1976 (c.34) s.9(6); Wages Councils Act 1979 (c.12) s.28. Employment Act 1982 (c.46) s.18.

An au pair is a worker, as performing services that are not purely marginal or ancillary under the direction of employers and for remuneration (*R. (Ozturk) v Secretary of State for the Home Department* [2006] EWCA Civ 541).

“Any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a ‘worker’. The essential feature of an employment relationship is, according to the case law of the court, that for a certain period of time a person performs services for and under the direction of another person in return for which he or she receives remuneration.” (*Alevizos v Ipourgos Ikononikon* (Case C-392/05) ECJ at [67].)

For express application of the meaning of “worker” in art.39 of the EC Treaty, see European Union (Accessions) Act 2006 s.2(10).

See also New Law Journal, May 25, 2007, pp.728–729.

Part-time fee-paid tribunal chairmen are not workers for the purposes of domestic regulations implementing European law relating to part-time working (*Christie v Department for Constitutional Affairs*, T.L.R., September 4, 2007, EAT).

For a recent discussion of the conditions to be satisfied in order to be considered a worker for the purposes of EU agreements, see *Ezgi Payir v Secretary of State for the Home Department* (Case C-294/06) ECJ.

For Community purposes, “worker” has to be construed widely as including anyone who pursues activities of a significant kind, excluding only the merely marginal and ancillary (*Raccanelli v Max-Planck-Gesellschaft* (Case C-94/07) [2008] 3 C.M.L.R. 25 ECJ).

A person does not cease to be a worker merely by reason of entering a country as an au pair or student (*R. (Payir) v Home Secretary* (Case C-294/06) ECJ [2008] 1 W.L.R. 1910).

WORKHOUSE

Part-time judges are not workers for the purposes of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations (SI 2000/1551) (*O'Brien v Department for Constitutional Affairs* [2008] EWCA Civ 1448).

For the purposes of the Employment Rights Act 1996 s.230(3), valeters were workers and not self-employed contractors, irrespective of their contractual description (*Autoclenz Ltd v Belcher* [2009] EWCA Civ 1046).

The European definition of “worker” is “rooted in rights and duties and in remuneration” (*X v Mid Sussex Citizens Advice Bureau* [2010] 1 C.M.L.R. 27, EAT).

Stat. Def., Pensions Act 2008 ss.88–98.

“It follows from the definition that all employees are workers, but not all workers are employees. The central feature of both concepts, however, is that the worker should be employed pursuant to a contract. If there is no contract personally to perform work or services, then neither concept applies.” (*Ajar-Tec Ltd v Stack* [2012] EWCA Civ 543.)

For discussion of the principles to be applied in determining who is a “worker” in the healthcare context see *The Hospital Medical Group Ltd v Westwood* [2012] EWCA Civ 1005.

“Can a member of a limited liability partnership be a worker within the meaning of Section 230 of the Employment Rights Act 1996? That is the question of principle which arises in this case. . . . It may be that it was because of the uncertain effect which the creation of LLPs would have on the employment status of members that Parliament thought it appropriate to pass Section 4(4) so as to make the position clear. In my view it has achieved that objective—albeit in a curiously drafted provision—with the result that a member of an LLP cannot be regarded as employed by the LLP either as a worker or an employee by reason of his or her membership alone.” (*Clyde & Co LLP v Bates Van Winkelhof* [2012] EWCA Civ 1207.)

Stat. Def., Employment Rights Act 1996 s.43K as amended by Enterprise and Regulatory Reform Act 2013 s.20.

See OCCUPATION; PREGNANT WORKER.

See FEMALE WORKER; PROFESSIONAL.

WORKHOUSE. “Workhouse” (Poor Law Amendment Act 1834 (c.76) s.109) included “any house in which the poor of any parish or union shall be lodged and maintained; or any house or building purchased erected hired or used, at the expense of the poor rate by any parish vestry guardian or overseer, for the reception, employment, classification, or relief of any poor person therein at the expense of such parish”; “united workhouse” meant and included “any workhouse of a union” (1834 Act).

Stat. Def., Lunacy Act 1890 (c.5) s.341; Prevention of Cruelty to Children, etc. Acts 1889 (c.44) s.17, and 1894 (c.41) s.26 (see now Act of 1904 (c.15) s.30). “Workhouse” and “workhouse infirmary”: see National Health Insurance Act 1924 (c.38) s.116.

WORKING. As regards working minerals “there is no case which defines what ‘working’ is” (per counsel in *Bishop Auckland Co-operative Society v Butterknowle Colliery Co*, 73 L.J. Ch. 637). But see definition in Mines (Facilities and Support) Act 1923 (c.20) s.1.

Building “used exclusively for the working of” a mine: see *Tylecote v Morton*, 85 L.T. 692.

“Working on a co-partnership system”; “working on the premium bonus system”; see *Ashley v General Union of Operative Carpenters and Joiners* [1922] 2 A.C. 440.

A circular saw operator who used it after working hours to help another workman on a private job was not “working” on the premises within the meaning of s.14(1) of the Factories Act 1937 (c.67), now s.14(1) of the Factories Act 1961 (c.34) (*Napieralski v Curtis* [1959] 1 W.L.R. 835).

“Working” (Threshing Machines Act 1878 (c.12) s.1). A machine was “working” within the meaning of this section as long as motive force was supplied to it, even though for a short period it was not in fact threshing (*Jones v Richards* [1955] 1 W.L.R. 444).

“Working” (Contracts of Employment Act 1963 (c.49) Sch.2 para.2 (4); now Contracts of Employment Act 1972 (c.53) Sch.2 para.2(4), now Employment Protection (Consolidation) Act 1978 (c.44) Sch.3 para.3(2)). Employees not on the employer’s premises, but who were receiving full back pay at an agreed rate, were not “working” within the meaning of this paragraph (*Adams v Wright (John) & Sons (Blackwall)* [1972] I.C.R. 463).

“Working” (Construction (Working Places) Regulations 1966 (SI 1966/94) reg.6(2)). It was held that, where a workman was moving along the top of a wall with a pneumatic hammer in his possession and he fell from the wall, he had not been “working” there at the time of the accident within the meaning of this regulation (*Brady v Dundee DC* (1980) S.L.T. (Notes) 60).

In the course of “working any railway”: see IN THE COURSE.

“Working for hire”: see EMPLOYMENT.

Stat. Def., Mines and Quarries Act 1954 (c.70) s.182(3).

See ENGAGED IN WORKING; LIBERTY OF WORKING.

WORKING CLASSES. The words “working classes” no longer appear in housing legislation and covenant that obliged a landlord to use premises for housing the “working classes” was held not to be valid (*Westminster City Council v Duke of Westminster* (1992) 24 H.L.R. 572).

WORKING DAY. Stat. Def., “means any day other than—(a) a Saturday or a Sunday; (b) Christmas Day or Good Friday; or (c) a day which is a bank holiday under the Banking and Financial

Dealings Act 1971 in any part of the United Kingdom” (Terrorism Act 2006 s.3(9)); Education and Inspections Act 2006 s.60(10).

Stat. Def., Recall of MPs Act 2015 s.22.

WORKING DAYS. “‘Working days’ in a charterparty will vary in different ports. If by the custom of the port certain days in the year are holidays, so that no work is done in that port on those days, then ‘working days’ do not include those holidays. ‘Working days’, in an English charterparty, if there is nothing to show a contrary intention, do not include Christmas Day, and some other days which are well known to be holidays. Therefore ‘working days’ mean days on which, at the port according to the custom of the port, work is done in loading and unloading ships, and the phrase does not include Sundays” (per Esher, M.R., *Nielsen v Wait*, 16 Q.B.D. 71). See hereon *Straker v Kidd*, 3 Q.B.D. 223. See *British & Mexican Shipping Co v Lockett* [1911] 1 K.B. 264.

“Working days”, unqualified by some such phrase as “weather permitting” or “weather working day”, are not made non-working days by bad weather (*Tiis v Byers*, 1 Q.B.D. 244, cited DEMURRAGE; but see *Harper v McCarthy*, 2 B. & P.N.R. 258, cited DAY).

Charterers “to be allowed 350 tons per working day of 24 hours for loading and discharging” means that the charterers are to have 24 working hours to load or discharge each 350 tons (affirmed, nom. *Forest SS Co v Iberian Co*, 81 L.T. 563); the phrase means “that 24 hours in which work is usually done at the port of loading or discharging, as the case may be, are to elapse before a day can be reckoned against the charterers” (per Bigham J., *Forest*).

But where the words were, “cargo to be shipped at the rate of 500 tons per working day of 24 ‘consecutive’ hours (weather permitting), Sundays and holidays always excepted”; held, that that did not mean 24 working hours, but meant that (excepting Sundays and holidays) each period of 24 consecutive hours (including night and non-working hours) elapsing after loading or discharging began must be reckoned as a working day—“consecutive hours” meaning hours following one another immediately and without interval of time (*Turnbull v Cruickshank*, 42 Sc. L.R. 207, distinguishing *Forest SS Co v Iberian Co*, above). See further *Watson v Mysore Manganese Co*, 54 S.J. 234.

As to the number of hours to be calculated for a “working day”, as regards demurrage, see further *Mein v Ottmann*, 41 Sc. L.R. 144.

A “weather working day” in a demurrage clause in a charterparty is computed according to the number of hours worked at standard, as opposed to overtime, rates of pay (*NV Maatschaappij Zeevort v M Friesacher Soehre* [1962] 1 W.L.R. 535).

“Working day” is a length of time consisting of the number of hours usually worked at the port in question (*Alvion Steamship Corp v Galban Lobo Trading Co* [1955] 1 Q.B. 430), and in relation to lay days is a day of 24 hours which is a day of work at that port as opposed to a day of rest: it matters not that work on that day has to be paid for at overtime rates (*Reardon Smith Line v Ministry of Agriculture, Fisheries and Food* [1963] A.C. 691).

“Working day” (Transport Act 1968 (c.73) s.96(3)). Hours spent driving overseas are not part of a driver’s “working day” for the purposes of this section (*Fox v Lawson* [1973] 1 Q.B. 757).

For the purposes of construing contractual provisions there is a presumption that “working days” in the United Kingdom are Mondays to Fridays, excluding Christmas, Easter and Bank holidays (*Lafarge (Aggregates) Ltd v Newham LBC* [2005] EWHC 1337 (Comm)).

(Council Regulation 3821/85 on recording equipment in road transport, art.15; Transport Act 1968 (c.73) s.97.) Driving home from work in any vehicle fitted with a tachograph comprised part of the “daily working period” covered by art.15 (*DPP v Guy* [1998] R.T.R. 82).

See DAY.

Stat. Def., Notice of Accidents Act 1894 (c.28) s.1; Transport Act 1968 (c.73) s.103; Consumer Credit Act 1974 (c.39) s.189; Employment Protection (Consolidation) Act 1978 (c.44) s.110(9).

Stat. Def., “means a day which is not—(a) Saturday, (b) Sunday, (c) Christmas Day, (d) Good Friday, or (e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c.80) in any part of the United Kingdom” (s.136 of the Nationality, Immigration and Asylum Act 2002 (c.41)).

Stat. Def., s.10(6) of the Freedom of Information Act 2000 (c.36).

See COLLIERY WORKING DAY; DAYS; DEMURRAGE; LAY DAYS; RUNNING DAYS; WEATHER WORKING DAY.

WORKING EXPENSES. "Working expenses of the railway and other proper outgoings" (Railway Companies Act 1867 (c.127) s.4); see *Re Eastern & Midlands Railway*, 45 Ch. D. 367; *Proffitt v Wye Valley Railway*, 64 L.T. 669; *Re Wrexham etc. Railway* [1900] 1 Ch. 261; [1900] 2 Ch. 436. The expenses of promoting a bill to substitute electricity for steam power were not "working expenses", or "other proper outgoings" within the section (*Re Mersey Railway*, 64 L.J. Ch. 623). See further, as regards "working expenses" in the section, *Re Manchester & Milford Railway*, 66 L.J. Ch. 141.

"Working expenses" (Racecourse Betting Act 1928 (c.41) s.3) covered the expenses incurred reasonably and properly, in the "working" (i.e., the setting up, keeping and operating) of totalisators on approved racecourses; but they were not limited to such expenditure only as was wholly and exclusively laid out for the purposes of the board's business (*Racecourse Betting Control Board v Young* [1958] 1 W.L.R. 705; subsequently affirmed [1959] 1 W.L.R. 813, H.C.).

See EXPENSES.

WORKING HOLIDAY. For the purposes of a charterparty a working holiday is a holiday on which loading may be performed without substantial extra payment to the men engaged in loading the ship (*Panagos Lyras SS (Owners) v Joint Danube & Black Sea Shipping Agencies of Braila*, 47 T.L.R. 403).

WORKING HOURS. Time in which an employee was required to "stand by" in case of emergency was held not to fall within his "working hours of duty" for the purposes of a contract of employment (*Farmer v London CC* [1943] K.B. 522).

"Working hours" (Employment Protection Act 1975 (c.71) s.53(2)(b), Sch.16 Pt III para.11, amending Trade Union and Labour Relations Act 1974 (c.52) Sch.1 para.6(4)). Lunch and tea breaks are not part of an employee's "working hours" within the meaning of this legislation, even though the employee is required to remain on the premises during those breaks (*Zucker v Astrid Jewels* [1978] I.C.R. 1088).

Stat. Def., Shops Act 1950 (14 Geo. 6, c.28) s.74; Industrial Relations Act 1971 (c.72) s.5(5); Employment Protection Act 1975 (c.71) s.53; Employment Protection (Consolidation) Act 1978 (c.44) ss.23, 58, as substituted by s.3 of the Employment Act 1982 (c.46); Trade Union Act 1984 (c.49) ss.9, 11, 13.

WORKING LIFE. Stat. Def., Social Security Act 1975 (c.14) s.27(2).

WORKING MEN'S HOSTEL. See HOSTEL.

WORKING ORDER. See PROPER WORKING ORDER.

WORKING PLACE. As regards the efficient lighting of working places under the Building Regulations 1926 (No.738) reg.15, a night watchman's tour of duty was not a "working-place" (*Field v Perry's (Ealing)* [1950] 2 All E.R. 521).

A cab proprietor's yard to which cab drivers go as hirers of cabs was a "work-place" within s.38, Public Health (London) Act 1891 (c.76) (*Bennett v Harding* [1900] 2 Q.B. 397).

A road is not a working-place within s.49 of the Coal Mines Act 1911 (c.50) and s.48(1) of the Mines and Quarries Act 1954 (c.70) merely because men are repairing it (*Wraith v National Coal Board* [1954] 1 W.L.R. 264). A party engaged in enlarging and constructing the working roadhead to the coal face, after shots had been fired to rip down the roof, were working in a "working place" within the meaning of these sections (*Walsh v National Coal Board* [1956] 1 Q.B. 511). Such a "working place" includes any place where a man works, or is sent to work, or is expected to go, and it does not ipso facto cease to be a working place because an element of danger arises

(*Venn v National Coal Board* [1967] 2 Q.B. 557). But an area where no miner should be working, and where the mine manager could not have expected anyone to be working was held not to be a “working place” within the meaning of s.48(1) of the 1954 Act (*Hammond v National Coal Board* [1984] 1 W.L.R. 1218).

A floor temporarily used as a roof was a working-place within reg.24(1) of the Building (Safety, Health and Welfare) Regulations 1948 (No.1145) (*George Ball & Sons v Sill* (1954) 52 L.G.R. 508). Such working place must be similar to a working-platform and should have the same characteristics. A man painting a roof without a platform has no working-place within the regulation (*Gill v Donald Humberstone & Co* [1963] 1 W.L.R. 929). To fall within this regulation a place had to be a place where a man was going to work for an appreciable time, a comparatively small area, and level; for example a new flat concrete roof (*Kelly v Pierhead* [1967] 1 W.L.R. 65). But a duckboard lying flat on the lower half of a barrel-shaped roof was held not to be a “working place” within this regulation (*Regan v G&F Asphalt* (1967) 65 L.G.R. 464).

Gangways between holes in the floors of a building being demolished were “working places” within the meaning of reg.28(1) of the Construction (Working Places) Regulations 1966 (SI 1966/94) (*Boyton v Willment Brothers* [1971] 1 W.L.R. 1625). Where, after the removal of scaffolding, a workman was instructed to remove some scaffold boards from a flat roof, and in doing so fell and was injured, it was held that as the 10–15 minutes required to do the job was an appreciable time, the roof was a “working place” within the meaning of these regulations (*Ferguson v John Dawson and Partners* [1976] 1 W.L.R. 1213).

WORKING PLATFORM. Building (Safety, Health, and Welfare) Regulations 1948 (No.1145) reg.22: does not include a fixed platform which is part of a plant being erected (*Hutchison v Cocksedge & Co* [1952] 1 All E.R. 696; *Curran v Neill (William) & Son* [1961] 1 W.L.R. 1069).

Beams laid to receive the noelith involved in the construction of the second floor of a dwelling-house under construction were not a “working platform” within the meaning of reg.24(1) of the Construction (Working Places) Regulations 1966 (No.94) (*Buist v Dundee Corp* (1971) S.L.T. 76).

WORKING PROPRIETORS. (Finance (No.2) Act 1939 (c.48) s.13(2); Finance 1940 (c.30) s.31(1).) See *Inland Revenue Commissioners v Stirling* (1943) S.C. 476; *Inland Revenue Commissioners v Frank Stone (Kidderminster)* [1942] 3 T.R. 19.

WORKING SHAFT. A “working shaft” (Metalliferous Mines Regulation Act 1872 (c.77) s.23(10)) was one which was being used and in which men were working for the purposes of a MINE, whether such purposes were for getting ore or not (*Foster v North Hendre Co* [1891] 1 Q.B. 71).

WORKING TIME. The concept of working time for the purposes of Directive 93/104 is a concept of Community law requiring to be defined by reference to the Directive (*Landeshauptstadt Kiel v Jaeger* [2003] 3 C.M.L.R. 16, ECJ).

“42 With regard more specifically to the concept of ‘working time’ within the meaning of Directive 93/104, it has already been held that the directive defines that concept as any period during which the worker is working, at the employer’s disposal and carrying out his activity or duties, in accordance with national laws and/or practices, and that that concept is placed in opposition to rest periods, the two being mutually exclusive . . . 43 The conclusion must be in this context, first, that Directive 93/104 does not provide for any intermediate category between working time and rest

periods and, second, that the intensity of the work done by the employee and his output are not among the characteristic elements of the concept of 'working time' within the meaning of that directive. 44 The Court has also held that the concepts of 'working time' and 'rest period' within the meaning of Directive 93/104 may not be interpreted in accordance with the requirements of the various legislations of the Member States but constitute concepts of Community law which must be defined in accordance with objective characteristics by reference to the scheme and purpose of that directive, intended to improve workers' living and working conditions. Only such an autonomous interpretation is capable of securing full effectiveness for that directive and uniform application of those concepts in all the Member States (see *Jaeger*, paragraph 58)." (*Dellas v Premier Ministre* (C-14/04) ECJ.)

WORKING WEEK. Stat. Def., Transport Act 1968 (c.73) s.103.

WORKLESS DAY; WORKLESS PERIOD. "Workless day" (Employment Protection Act 1975 (c.71) s.22, now Employment Protection (Consolidation) Act 1978 (c.44) s.12). Where a contract providing for a four-day week was amended to provide for a two-day week and was accepted, though under protest, the two non-working days did not become "workless days" within the meaning of this section (*Clemens v Richards (Peter) t/a Bryan (John)* [1977] I.R.L.R. 332).

Stat. Def., Employment Protection Act 1975 (c.71) s.22; Employment Protection (Consolidation) Act 1978 (c.44) s.12.

WORKMAN. As regards secure fencing under s.14(1) of the Factories Act 1937 (c.67), now s.14(1) of the Factories Act 1961 (c.34), "workman" means not only the actual operator but also any other person employed on the premises (*John Summers & Sons v Frost* [1955] A.C. 740).

"Workman" (Building (Safety, Health and Welfare) Regulations 1948 (No.1145) regs 4, 31 (1)) does not include an independent contractor, who cannot claim the benefit of the regulations, to which the definition of "workman" in Employers and Workmen Act 1875 (c.90) s.10 does not apply (*Herbert v Harold Shaw* [1959] 2 Q.B. 138).

(Industrial Disputes Order 1951 (No.1376) art.12(1).) A town clerk is a "workman" (*R. v International Arbitration Tribunal, Ex p. South Shields Corp* [1952] 1 K.B. 46).

Stat. Def., Employers and Workmen Act 1875 (c.90) s.10; Employers' Liability Act 1880 (c.42) s.8; Workmen's Compensation Acts 1897 (c.37), 1906 (c.58), 1925 (c.84); Truck Act 1887 (c.46) s.2; Mines and Quarries Act 1954 (c.70) s.185.

See ARTIFICER; EARNINGS; IN OR ABOUT; LABOURER; PERSONAL LABOURER; SERVANT; SUCH EXAMINATION; SUCH; UNDER.

For an extensive list of earlier authorities see Stroud's Judicial Dictionary, 5th edn.

WORKMANLIKE. See PROPER AND WORKMANLIKE.

WORKMEN'S COMPENSATION ACTS. Stat. Def., National Health Insurance Act 1936 (c.32) s.226(1).

WORKMEN'S TRAINS. Workmen's trains as provided for by the Cheap Trains Act 1883 (c.34) (see s.3), were trains which railway companies had to provide at a low third class rate between the hours of 6 pm and 8 am, for the reasonable accommodation of working people; and a train was not less a "workman's train" because the railway company chose, for their own convenience, to run first and second class carriages with it (*Re Metropolitan Railway, 8 Ry. & Can. Traffic Ca. 32*, cited REASONABLE).

See hereon WORKING CLASSES; WORKING MEN'S DWELLINGS; WORKMAN.

WORKPEOPLE

WORKPEOPLE. Self-employed operatives used by a building contractor are not “workpeople” within the meaning of cl.31 of the JCT Contract (*J Murphy & Sons v Southwark LBC* (1983) 81 L.G.R. 383).

WORKPLACE. Stat. Def., s.339 of the Income Tax (Earnings and Pensions) Act 2003 (c.1).

An embankment can be a workplace for the purpose of health and safety at work law (*Cambell v East Renfrewshire Council* (2004) Rep. L.P. 89 (OH); but see FLOOR).

WORKS. Pit-pans and levels, held to be “works”, within a licence to get chinaclay (*Martin v Williams*, 26 L.J. Ex 117); but tram-plates fastened to sleepers, not let into but resting on the ground, are not “works” within a mining lease (*Beaufort v Bates*, 31 L.J. Ch. 481; but see *Mansfield v Blackburne*, 10 L.J.C.P. 178).

A canal company was authorised by statute to supply water for condensing or raising steam to mills or works within 100 yards of the canal. “Works” was held not to include troughs, pipes, and other installations, within 100 yards of the canal, belonging to a railway company (*Att-Gen v Rochdale Canal Co*, 55 T.L.R. 754).

There were “works” within s.1(1) of the Employers’ Liability Act 1880 (c.42) of the wherever the employer was doing work, though it was but temporary, e.g. pulling down a wall (*Brannigan v Robinson* [1892] 1 Q.B. 344); but works contracted for were not those of the contractee until he took them over (*Howe v Finch*, 17 Q.B.D. 187); included the building site of a half-built house (*Hunt v Rice & Son* [1937] 1 All E.R. 576). See DEFECT; WAYS.

“Works”, in a guarantee, construed as works already ordered (*Plastic Co v Massey-Mainwaring*, 11 T.L.R. 205).

“Works and buildings” in a Rating Act: see *R. v Midland Railway*, 3 W.R. 415.

“Works for the erection . . . of a building” (Town and Country Planning Act 1947 (c.51) s.78(1)) included all the works necessary to carry out the erection of the building, e.g. demolition necessary before building could be commenced (*London CC v Marks & Spencer Ltd* [1953] 2 W.L.R. 932).

“Works on land” (Town and Country Planning Act 1947 (above) s.75(1)) included a model village (*Buckinghamshire CC v Callingham* [1952] 2 Q.B. 515).

“Works of artistic craftsmanship” (Copyright Act 1956 (c.74) s.3(1)(c)). A suite of furniture cannot be a “work of artistic craftsmanship” for the purposes of this section (*Hensher (G.) v Restawile* [1973] 3 W.L.R. 453).

The object of a charitable society to “publish works” about Egypt refers to publication of the results of the excavations which it is the society’s object to carry out (*Re British School of Egyptian Archaeology, Murray v Public Trustee* [1954] 1 W.L.R. 546).

“Completion of works”: see *Stock v Meakin* [1899] 2 Ch. 496, cited OUTGOING.

“Works” within cl. 27.4.1 and 27.4.4 of the JCT Standard Form, 1980 edn did not include snagging and remedial works undertaken after practical completion (*Emson Eastern (in receivership) v EME Development*, 26 ConLR 57).

(National Trust Act 1971 (c.6) s.23.) “Works” in s.23(1) should be construed widely to include the power to erect fences in appropriate cases and was not to be confined to the erection of buildings (*National Trust for Places of Historic Interest or Natural Beauty v Ashbrook, The Times*, July 3, 1997).

Stat. Def., “includes any building, structure, excavation or other work on land” (Town and Country Planning (Scotland) Act 1997 (c.8) s.251(6)).

“Accommodation works”: see ACCOMMODATION.

“Board of works”: see BOARD.

“Works of maintenance”: see MAINTAIN.

“Works necessary”: see NECESSARY; SUPPLY.

“Works of engineering construction”: see ENGINEERING.

“Permanent works”: see PERMANENT.

“Proper works”: see CONVENIENCE.

Works “for sewage purposes”: see SEWAGE.

Stat. Def., Iron and Steel Act 1975 (c.64) s.37; Aircraft and Shipbuilding Industries Act 1977 (c.3) s.56; Ancient Monuments and Archaeological Areas Act 1979 (c.46) s.61; Iron and Steel Act 1982 (c.25) s.37; Industrial Development Act 1982 (c.52) s.6.

In s.10 of the Compulsory Purchase Act 1965, a reference to injurious affection by the execution of works includes a reference to all the works being carried out, not just those carried out on the compulsorily acquired land ([2007] EWCA Civ 764).

“22. The expression ‘works’ is defined in section 2 as: ‘Works of any nature whatever in, under or over the Thames or which involve cutting its banks other than those referred to in section 73 (Licensing of dredging, etc.) of this Act.’

23. It is common ground that the placing of mooring roots where Mr Lacey has his roots would fall within the expression ‘works’. There is a dispute as to whether two of his actual fixings and associated chains fall within the definition of ‘works’ (because Mr Lacey says they are fixed to a wall and not placed in the Thames), and that is a question which I will have to deal with hereafter. . . .

243. So there is nothing in the ancient moorings exemption which would save these chains if they are ‘works’ within the 1968 Act. I consider that they are ‘works’. The definition of ‘works’ appears above. I do not consider that the mere affixing of plates on wall with rings for mooring would necessarily be ‘works’ for these purposes (they are not in, under or over the Thames; nor do they amount to ‘cutting of [its] banks’ as suggested by Mr Harpum). But running chains to it must involve something ‘over’ (or ‘under’, if they are below the water or the silt) the river, and in my view they would be works. Mooring chains as such can be ‘works’ (that is implicit in section 63), and laying an unfixed chain for mooring to (if sensible) would amount to “works” for these purposes. So running one to a fixing on the wall amounts to ‘works’. Such a chain would plainly be capable of having as much effect on navigation and the operation of the Thames as a chain fixed to the river bed, so it is within the mischief of the Act. Accordingly, I hold that the running and fixing of those chains and their attachment to the wall are ‘works’ requiring a licence under the Act.” (*The Port of London Authority v Tower Bridge Yacht & Boat Co Ltd* [2013] EWHC 3084 (Ch).)

See CONNECTED WITH; IMMEDIATELY CONNECTED; STREET WORKS; SUBSTANTIALLY; WATERWORKS; WORK; NON-TEXTILE FACTORIES.

WORKS TRUCK. A vehicle which has to be driven for more than 1000 yards on a public highway, in passing from one part of private premises to another, cannot be a “works truck” within the meaning of the Motor Vehicles (Construction and Use) Regulations 1969 (SI 1969/321) reg.3(1), now Motor Vehicles (Construction and Use) Regulations 1973 (SI 1973/24) reg.3(1) (*Hayes v Kingsworthy Foundry* [1971] R.T.R. 286).

WORKSHOP. A room in which children were taught, and were engaged in, straw-plaiting, by and under the superintendence of a person who had no interest in the work done or the proceeds of it; held, a “workshop” within s.4, Workshop Regulation Act 1867 (c.146) (*Beadon v Parrott*, L.R. 6 Q.B. 718).

WORKSTATION

“Workshop” (Factory and Workshop Act 1901 (c.22) ss.29(1), 149, 157). See *Nash v Hollinshead* [1901] 1 K.B. 700; *Curtis v Skinner*, 95 L.T. 31; *Hoare v Green* [1907] 2 K.B. 315; *Fullers v Squire* [1901] 2 K.B. 209; *Lewis v Gilbertson*, 91 L.T. 377.

A building planned and adapted for a laundry is a “workshop”, within a restrictive covenant (*Meredith v Wilson*, 69 L.T. 336).

“Workshop” (Rating and Valuation (Appointment) Act 1928 (c.44) s.3(1)(d)). Premises used for the maturing of whisky in butts or barrels were occupied as a “workshop”, as it required constant checking and attention during maturation (*Bell (Arthur) & Sons v Fife Assessor* (1968) S.L.T. 185).

“Dwelling-house, workshop, or other building”: see BUILDING.

Stat. Def., Factory and Workshop Act 1901 (c.22) s.149; Shops Act 1934 (Geo. 5, c.42) s.15(1).

See LIGHT; FACTORY.

WORKSTATION. A cubicle was not a “workstation” for the purposes of regulations implementing the Workplace Directive. Although the cubicle was B’s workplace at the material time, a “workstation” connoted set up items of equipment for the purpose of enabling certain categories of work to be carried on there, and not simply apparatus to enable certain natural functions to be performed (*Butler v Grampian University Hospitals NHS Trust* (2002) S.L.T. 985, Outer House).

WORLD. To say of a person that he holds himself out “to the world” in any capacity, “is a loose expression” (per Parke, B., *Dickeson v Valpy*, 10 B. & C. 140). See HOLD OUT.

A company whose business is to be carried on “in any part of the world” has no defined locality (*Marshall v Orpen* [1895] A.C. 606, cited CARRY ON).

A world-wide restraint of trade was held valid in *Nordenfelt v Maxim Nordenfelt Guns & Ammunition Co* [1894] A.C. 535.

WORLDLY ESTATE. When a man speaks of his “worldly estate”, that, probably, means all his property, so that the phrase is synonymous with substance (*Muddle v Fry*, 6 Mad. 270; *Gall v Esdaile*, 1 L.J.C.P. 95; *Doe v Gwillim*, 2 L.J.K.B. 194; *Lloyd v Jackson*, L.R. 1 Q.B. 571; 2 Q.B. 269). Cp. WORLDLY GOODS; WORLDLY PROPERTY.

See TEMPORAL.

WORLDLY GOODS; WORLDLY SUBSTANCE. “The phrase ‘worldly goods’ is properly applicable only to personal estate” (2 Jarm. (8th edn), 995); but “‘worldly substance’ includes every property a man has” (per Mansfield C.J., *Hogan v Jackson*, 1 Cowp. 307). Even “worldly goods” may be controlled by a context to include realty (*Wright v Shelton*, 18 Jur. 445, cited 2 Jarm. (8th edn), 995). See also *Re Troup Estate* [1945] 1 W.W.R. 364. Cp. WORLDLY ESTATE.

WORLDLY LABOUR. “Worldly labour, business, or work”, Sunday Observance Act 1677 (29 Car. 2, c.7): “The expression ‘any worldly labour’ cannot be confined to a man’s ordinary calling; but applies to any business he may carry on, whether in his ordinary calling or not” (per Park J., *Smith v Sparrow*, 4 Bing. 89). See ORDINARY CALLING. But the Act only related to an artificer, labourer, or workman, or to a tradesman.

WORN OUT. See SICK.

WORRY. “Worrying livestock means . . . chasing livestock” (Dogs (Protection of Livestock) Act 1953 (c.28) s.1(2)(b)). A dog which runs through a field of sheep,

scaring them and putting them to flight in such a way as to cause them injury or suffering is “worrying livestock” (*Stephen v Milne* (1960) S.L.T. 276). See also *Hanlin v O’Sullivan* [1955] L.M.D. 964.

WORSENING. “Worsening of his position” (Transport Act 1968 (c.73) s.135(1); British Transport (Compensation to Employees) Regulations 1970 (SI 1970/187) reg.13(1)). In a case where employees were transferred to a subsidiary company it was held that the test of a “worsening” of position was not a comparison of the employee’s position after transfer with what it would have been if he had remained with the original company. The comparison for “worsening”, had to be judged between the past and present position of the men within the subsidiary company only (*Tuck v National Freight Corp* [1979] 1 W.L.R. 37).

WORSHIP. The meaning of the word “worship” in our Anglican Marriage Service—“with my body I thee worship”—is “honour”. The Puritans always objected to the word; and in 1661 it was agreed that “honour” should be substituted, the alteration being made by Sancroft in Bishop Cosin’s revised Prayer Book, instead of the change suggested by Cosin himself. But, either by accident or through a change of mind on the part of the revision committee, the old word was allowed to remain. The more exclusive use of this word in connection with Divine Service is of comparatively modern date. In the *Liber Festivalis*, printed by Caxton in 1483, an Easter homily calls every gentleman’s house “a place of worship”, and in the same century a prayer begins, “God that commandest to worship fadir and modir”. This secular use of it is still continued in the title “your Worship”, by which magistrates are addressed, and in the appellation “worshipful companies”. The expression “with my body I thee worship”, or “honour”, is equivalent to a bestowal of the man’s own self upon the woman, in the same manner in which she is delivered to him by the Church from the hands of her father (*Blunt’s Annotated Book of Common Prayer* (6th edn), 269; see also, for a collection of authorities on “worship”, *Mant’s Book of Common Prayer* 492, 493).

Scientology does not conduct “worship”—see *Hodkin, R. (on the application of) v Registrar General of Births, Deaths and Marriages* [2012] EWHC 3635 (Admin).

Place of worship: see PLACE; PUBLIC RELIGIOUS WORSHIP; PUBLIC WORSHIP; USUAL PLACE OF RELIGIOUS WORSHIP.

See DIVINE SERVICE; PLACE OF PUBLIC RELIGIOUS WORSHIP; RELIGIOUS.

WORSLEY’S (LORD) ACT. Inclosure Act 1836 (6 & 7 Will. 4, c.115).

WORTH. A testamentary gift of “all I am worth”, includes the realty (*Huxtep v Brooman*, 1 Bro. C.C. 437; see thereon 1 Jarm. (8th edn), 987, 989. See also ALL).

An agreement for so many pounds “worth” of shares in a company does not mean shares to that nominal amount, but means the number of shares which, at their market value, would be purchased by the sum named (*McIlquham v Taylor* [1895] 1 Ch. 53). See further SHARE.

“Worth and value”, how arrived at: see *R. v Hull Dock Co*, 3 B. & C. 516.

“Not worth 25” (R.S.C. old Ord.16 r.22): see *Kydd v Liverpool Watch Committee*, 72 J.P. 113.

See EY.

WORTHY CAUSES. It was held that a residuary gift in a will to “such worthy causes as have been communicated by me to my trustees” did not, in the absence of such communication, demonstrate a general charitable intent (*Re Atkinson’s Will Trusts* [1978] 1 All E.R. 1275).

WOULD

WOULD. In a clause of forfeiture of a life interest if the beneficiary shall assign or become bankrupt, “or do or suffer anything whereby the income, if payable to him absolutely, would become vested in any other person”, “would” does not mean “might”, but means “will”; therefore, neither the filing of a bankruptcy petition, nor the execution of a composition deed by the beneficiary, will work a forfeiture; if the words were “may become vested”, the case might be different (per Cave J., *Ex p. Dawes, Re Moon*, 17 Q.B.D. 282); but if, in fact, an act of bankruptcy is followed by adjudication, then the forfeiture dates back to the act (*Montefiore v Guedalla* [1901] 1 Ch. 435, cited *BANKRUPTCY*). If such a clause provides for forfeiture if anything is “done or suffered” whereby the income “would become payable” to any other person, it will be operative on a bankruptcy receiving order being made against the beneficiary, though nothing further be done in such bankruptcy (*Re Sartoris* [1892] 1 Ch. 11, explained and followed in *Re Laye* [1913] 1 Ch. 298; *Re Forder* [1927] 2 Ch. 291; see also on this case *Re Brewer* [1896] 2 Ch. 503). See *ALIENATION*; *ASSIGN*; *SUFFER*; *TRANSFER*. See further *BANKRUPTCY*; *Re Baker* [1904] 1 Ch. 157, cited *CHARGE OR ENCUMBER*.

A had a power of appointment by writing over a life policy; in a memorandum he wrote, “the money from the Equitable Insurance Office I ‘would have’ equally divided between my daughters”; held, a good execution of the power (*Proby v Landor*, 30 L.J. Ch. 593). In that case Romilly M.R. said, “the word ‘would’ must be taken to mean ‘wish’”.

“Would have had apart from the Act a legal right to compensation”, in s.2(1) of the Indemnity Act 1920 (c.48); see *Commercial & Estates Co of Egypt v Board of Trade* [1925] 1 K.B. 271.

A tortfeasor “who is, or would if sued have been liable”, may be ordered to pay contribution to damages under s.6(1) of the Law Reform (Married Women and Tortfeasors) Act 1935 (c.30); this applies to a tortfeasor who would have been liable if sued within the time limit (*Morgan v Ashmore, Benson, Pease & Co* [1953] 1 W.L.R. 418).

“Reckless as to whether the life of another would be thereby endangered” (Criminal Damage Act 1971 (c.48) s.1(2)(b)). In this section “would” is used as going to the expectations of the normal prudent bystander. The fact that there were special features which prevented the risk of danger to another was irrelevant (*R. v Sangha* [1988] 1 W.L.R. 519).

“In support of that construction, he relies on the drafting of the supply agreement as a whole and the wider commercial context. So far as drafting is concerned, he points out, correctly, that it is not drafted in conventional English legal drafting language, for example the somewhat odd use of the conditional mood ‘would’ in clauses D1, 2, 3, 6 and 7.” (*Astrazeneca UK Ltd v Albemarle International Corp* [2011] EWHC 1574 (Comm)).

WOUND. “‘To wound’ means to divide the surface of the body, whether it be an internal—e.g. the inside of the mouth—or an external surface” (Steph. Cr. (9th edn), 229, citing *R. v Leonard Smith*, 8 C. & P. 173). Wounding may be done with the hand (*R. v Bullock*, L.R. 1 C.C.R. 115). To break a bone, without breaking the skin, semble, is not to wound (*R. v Wood*, 4 C. & P. 381). See further *R. v Owens*, 1 Moody, 205; *R. v Hughes*, 2 C. & P. 420.

In the collocation “stab, cut, or wound” (Offences against the Person Act 1828 (c.31) ss.11, 12), a wounding had to be accomplished by an instrument, because

"wound" was there associated with "stab, cut", and as a stab or cut must be made by an instrument, so it was held that "wound" meant an injury (other than a "stab" or "cut") made by an instrument (per Alderson B., *R. v Jennings*, 2 Lewin C.C. 130, explaining *R. v Stevens*, 1 Moody, 409; *R. v Harris*, 7 C. & P. 446). See hereon *R. v Waudby* [1895] 2 Q.B. 482.

A wound, for the purposes of s.20 of the Offences against the Person Act 1861 (c.100), is a break in the continuity of the whole skin; the rupture of blood vessels internally is not sufficient (*J.J.C. (a Minor) v Eisenhower* [1983] 3 W.L.R. 537).

Cp. MAIM.

WRAK. "Wrak", in the grant of an island or coast estate in Scotland and standing in connection with "waith" (i.e. a derelict), signifies wreck, and not sea ware (*Lord Advocate v Hebden*, 6 Macph. 489).

WRAPPER. "In any wrapper enclosing margarine or on any package" (Butter and Margarine Act 1907 (c.21) s.8); the "in" was used in contrast to "on" so that, semble, any printed matter put inside any wrapper had to comply with the provisions of the section: see *Williams v Baker* [1911] 1 K.B. 566.

Stat. Def., Revenue Act 1862 (c.22) s.28.

See PAPER WRAPPER.

WRECK. "Wrecke", or 'varech' (as the Normans, from whom it came, call it) is where a ship is perished on the sea, and no man escapeth alive out of the same, and the ship or part of the ship so perished, or the goods of the ship come to the land of any lord, the lord shall have that as a wrecke of the sea. But if a man, or a dog, or a cat, escape alive, so that the party to whom the goods belong, come within a yeare and a day, and prove the goods to be his, he shall have them againe, by provision of the statute of Westm. I, c.4, made in King Ed. I dayes, who therein followed the decree of Hen. I, before whose dayes, if a ship had been cast on shore, torne with tempest, and were not repaired by such as escaped alive within a certaine time, that then this was taken for wrecke" (Termes de la Ley). Cp. Doctor and Student, Di. 2, Ch.51; Hale, De Jure Maris, Ch.6; 1 Bl. Com. 290 et seq.; DERELICT; see hereon *Dunwich v Sterry* 1 B. & Ad. 831.

"De wreck de mere" (3 Edw. 1, c.4)—"wrecke or shipwrecke is an English word, in French *naufnage*, in ancient French *varech*, in Latine *naufragium*, legally *wreccum maris*, wrecke of the sea in legall understanding, is applied to such goods as after shipwreck at sea are by the sea cast upon the land; and therefore the jurisdiction thereof pertaineth not to the lord admirall but to the common law. Although this statute speaketh onely of wrecke, yet this statute extendeth to flotsam, jetsam, and lagan" (2 Inst. 167, citing *Constable's Case*, 5 Rep. 106 a).

"Wreck or loss of the ship" (Merchant Shipping Act 1894 (c.60) s.158): see *Austin Friars SS Co v Strack* [1905] 2 K.B. 315, and *Sivewright v Allen* [1906] 2 K.B. 81, both cited LOSS; see also *The Olympic* [1913] P. 92; *Horlock v Beal* [1916] 1 A.C. 486.

"Wreck or loss of a ship" (Merchant Shipping (International Labour Conventions) Act 1925 (c.42) s.1(1)): see *Barras v Aberdeen Steam Trawling & Fishing Co* [1933] A.C. 402.

As to whether cargo can be included in "wrecks of vessels", see *Vivian v Mersey Docks*, L.R. 5 C.P. 19.

"Wreck" (Mersey Docks and Harbour Act 1912 (c. xii) s.7): see *The Countess* [1921] P. 279, affirmed with variation, [1922] P. 41; varied, [1923] A.C. 345.

See DERELICT.

Stat. Def., Merchant Shipping Act 1995 (c.21) s.255(1).

See OWNER; SUNKEN WRECK.

WRIT. A writ is the process by which civil proceedings in the High Court are generally commenced: see ACTION; WRIT OF SUMMONS. Cp. PLAINT; PLEADING; SUMMONS. There are many other kinds of writ, e.g. writ of execution, writ of error, writ for the election of a Member of Parliament, etc. issued in the name of the reigning monarch, for the doing, or not doing, of some act or thing.

See *Binning Bros v Verrall Bowles* [1998] 1 All E.R. 409.

WRIT OF ASSISTANCE. These are writs used by officers of Revenue and Customs to perform searches in cases of urgency. They are referred to in s.161 of the Customs and Excise Management Act 1979 (c.2) although they are no longer of statutory origin (or even defined in statute).

“Writs of assistance are documentary authorisations to search unspecified premises for smuggled goods and anything else liable to forfeiture under customs law. They do not apply only at our frontiers, but operate inland if that is where the goods are. They are issued by the Queen’s bench division of the High Court at the beginning of a monarch’s reign and remain valid for six months after the end of the reign. During that time they are lodged at various Customs officers, where the senior manager is responsible for their use. The issue of writs of assistance is entirely under the control of that Customs and Excise senior manager.” (Paymaster General, HC Deb Standing Committee H, May 16, 2000, Finance Bill.)

The historical background to writs of assistance is as follows (kindly provided by officers of Her Majesty’s Revenue and Customs). On the restoration of the Monarchy in 1660, all the experienced Parliamentary Customs staff were put out of office and, as a reaction to perceived excesses under the Protectorate, no powers of search were conferred in relation to the customs duties newly imposed. In consequence, tobacco smuggling became a serious revenue problem, exemplified by the notorious running of a large quantity of tobacco into a City of London merchant’s premises. He declined to allow the customs officers to enter the premises to effect a seizure, and a stand off ensued. Given the notoriety, and visible contumacy, Parliament was persuaded to reconvene on a Saturday to pass the search warrant provisions of the Customs Act 1660, after which a magistrate’s warrant was procured to enter and search the premises, which had been surrounded, and seize the smuggled tobacco. Subsequently, however, the search warrant provisions were found to be “useless and inconvenient” (in the words of a later Law Officer) in the generality of cases, because the contraband being pursued moved more rapidly than seventeenth century magistrates could be found to grant search warrants. In 1662 therefore, as part of a general package of anti-fraud measures in the Customs Act of that year, the Writ of Assistance was introduced, which gave an officer, having one in his possession, power to enter any premises on reasonable suspicion to search for contraband, without the need for a magistrate’s warrant naming the particular premises to be searched. The statute (Customs Act 1662) provided for the issue of a batch of documents, entitled “Writs of Assistance” to the customs authorities by the Court of Exchequer. The Act went on to authorise a customs officer, having such a Writ in his possession, to enter any premises, including private dwelling houses, to search for and seize contraband, without the need to wait for a magistrate’s search warrant for the premises in question. Although often criticised as a “general warrant”, in law this is a power of entry for the officer without warrant, limited to those having a Writ in their possession. The Writ

was modelled on the mainstream law Writ of the same name, which had been invented by the Court of Chancery in the earlier years of the century to deal with intransigent litigants who refused to deliver up chattels pursuant to an order of the Court. The model case was that of a litigant who, ordered to deliver up a charter to the other party, declined. The traditional means of executing the Court's orders was to imprison the litigant in the Tower of London until he complied. However he might obstinately resist by remaining in his cell, sitting on the chest containing the charter, refusing to yield it up. The Court, not to be thwarted, invented the Writ of Assistance which authorised the court's officers to seize the charter from under him, where he sat. The Writ of Assistance has continued to this day, modified over the centuries, for example to make its use only possible in exigent circumstances.

WRIT OF CONTROL. Stat. Def., Tribunals, Courts and Enforcement Act 2007 s.62(4).

WRIT OF EXECUTION. "The term 'writ of execution' includes writs of *fieri facias*, *capias*, *elegit*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto" (Dan. Ch. Pr. 654). See also R.S.C. Ord.42 r.8.

See EXECUTION.

WRIT OF PROHIBITION. "The writ of prohibition is a judicial writ, issuing from a court of superior jurisdiction and directed to a court of inferior jurisdiction for the purpose of preventing it from usurping a jurisdiction with which it is not legally vested" (per McCardie J., *Turner v Kingsbury Collieries Ltd* [1921] 1 K.B. 167).

It will not lie to a county court judge sitting as arbitrator, under Workmen's Compensation Act 1906 (c.58): see *Turner v Kingsbury Collieries Ltd*, above. See further *Clifford v O'Sullivan* [1921] 2 A.C. 570.

An order of prohibition is now issued instead of the writ formerly issued: see R.S.C. Ord.53.

WRIT OF SUMMONS. Though an originating summons is an action, yet it is not a "writ of summons" within the old R.S.C. Ord.11 r.1 (see now the new Ord.11 r.1), and no order to serve it out of the jurisdiction can be granted (*Re Busfield*, 32 Ch. D. 123). From the judgment of Cotton L.J., in that case, it may be stated that a like rule applies to interpleaders, petitions, and applications to tax solicitors' costs, wherever an order is sought against the person out of the jurisdiction. See also that judgment for review and explanation of *Credits Gerundeuse v Van Weede*, 12 Q.B.D. 171; *Weldon v Gounod*, 15 Q.B.D. 622; *Re Haney*, 10 Ch. 275; *Re Bonelli's Co*, L.R. 18 Eq. 655; *Re Naylor*, 28 L.T. 18; *Re Maugham*, 22 W.R. 748; *Re Mewburn* [1874] W.N. 156. See further *Re Cliff* [1895] 2 Ch. 21; *Re Jellard*, 39 Ch. D. 424; *Re Anglo-African Steamship Co*, 32 Ch. D. 348; *Re Nathan Newman & Co*, 35 Ch. D. 1; *Re Liebig*, 59 L.T. 315.

See PLAINTIFF.

WRITING. In Acts of Parliament, "expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form" (Interpretation Act 1889 (c.63) s.20). See also Bills of Exchange Act 1882 (c.61) s.2; Local Government Act 1888 (c.41) s.99.

Prior to these statutory definitions it had been held that a "lithographed" memorial of a Middlesex deed, was a good compliance with s.5 (7 Anne, c.20), which required

WRITING

memorials to be “put into writing, in vellum or parchment” (*R. v Middlesex Registry*, 7 Q.B. 156). So, the printed name of a party to a contract may be a good signature by him: see SIGNED.

The foregoing are departures from the literal and old meaning of a “writing”, for Coke, speaking of a bargain and sale, says, “It must be by writing, and not by print or stamp” (2 Inst. 672). See PRINT.

A pencil writing has always been a sufficient compliance with a statutory or other requirement that the thing to be done shall be IN WRITING (*Geary v Physic*, 7 D. & R. 653).

A will is a “writing” within the meaning of a power to appoint “by writing” (*Lisle v Lisle*, 1 Bro. C.C. 533; *Orange v Pickford*, 27 L.J. Ch. 808). “If a power be created to be executed by a deed, or instrument in writing, although the words seem to indicate instruments *inter vivos* only, yet it is settled that it may be well executed by will” (per Westbury C., *Taylor v Meads*, 34 L.J. Ch. 206; see hereon Sug. Pow. 214, where it is stated that the leading case on this doctrine is *Kibbet v Lee*, Hob. 312). But if such a power goes on to prescribe special solemnities for its execution, e.g. that the writing is to be “under SEAL”, such requirements must be followed; and unless the power is “in terms” a power to appoint “by will”, a non-compliance with its requirements will not be cured by Wills Act 1837 (c.26) s.10 (*Taylor v Meads*, above, which overruled *Buckell v Blenkhorn*, 5 Hare, 131, and established the dicta of the L.J.J. in *Collard v Sampson*, 22 L.J. Ch. 729, and the decision of Wood V.C. in *West v Ray*, 23 L.J. Ch. 447; see hereon 2 Jarm. (8th edn), 793; Watson Eq. 888); on the other hand, if the alleged appointment be testamentary in form it must comply with the requirements of s.10; see *Re Barnett* [1908] 1 Ch. 402. See SIGNED, SEALED, AND DELIVERED. Cp. WILL. See further TESTAMENTARY DOCUMENT; TESTAMENTARY INSTRUMENT.

In *Re Parker* ([1894] 1 Ch. 707), Kekewich J. held that the power to appoint new trustees “by writing” given by s.31(1) of the Conveyancing Act 1881 (c.41) (see Trustee Act 1925 (c.19) s.36) was not exercisable by will.

Where a donee of property is to “take and use” a particular surname “in all deeds and writings to which he shall be a party, or which he shall sign”, that means as regards “writings”, “writings of a formal character”, and does not mean letters or visiting cards (*Re Drax*, 75 L.J. Ch. 317, cited OCCASION).

An author’s ms is a “writing” within the Carriers Act 1830 (c.68) s.1 (per Stonor, County Court Judge, *Lawson v London & South Western Railway*, 73 L.T. 147).

“Writing”, i.e. “am writing”, at end of a telegram accepting an OFFER, does not preclude the telegram from being an acceptance (per Walton J., *Howarth v Forder*, 48 S.J. 52). Cp. SUBJECT TO.

Stat. Def., Copyright, Designs and Patents Act 1988 (c.48) s.178. See also NOTICE.

“In writing”: Stat. Def., including electronic transmissions, s.16(2) of the Vehicles (Crime) Act 2001 (c.3).

“Agreement in writing”: Stat. Def., Arbitration Act 1996 (c.23) s.5(1).

“Writing under his hand”: see HIS HAND.

“Writing”: “written”; Stat. Def., Medicines Act 1968 (c.67) s.132.

Stat. Def., Interpretation Act 1978 (c.30) Sch.1.

See AGREEMENT IN WRITING; IN WRITING; INSTRUMENT IN WRITING; MEMORANDUM; NOTE.

WRITING UNDER HAND. “As a matter of ordinary usage in the English language (and in particular ordinary English legal usage) an instrument under

someone's hand is an instrument that he has signed." (*Trustee Solutions v Dubery* [2006] EWHC 1426 (Ch) per Lewison J. at [33].)

WRITTEN. See WRITING.

WRITTEN AGREEMENT. See IN WRITING; NOTE; SUBMISSION; ABANDONMENT.

WRITTEN BY. "Written by", appearing on the title page of a song set to music, refers only to the words of the song and do not mean "written and composed by" (*Barnard v Pillow* [1868] W.N. 94).

WRITTEN CONSENT. As to what is a sufficient "written consent" to an assignment of a lease, see *West v Dobb*, L.R. 5 Q.B. 460. See hereon UNREASONABLY.

"Written consent" of an urban authority to bring forward a building beyond the building line (Public Health, etc. Act 1888 (c.52) s.3): see *Mullis v Hubbard* [1903] 2 Ch. 431. The like as to plans: see *Merrett v Charlton Kings*, 67 J.P. 419.

WRITTEN INSTRUMENT. See INSTRUMENT; INSTRUMENT IN WRITING; WRITING.

WRITTEN INTIMATION. See INTIMATE.

WRITTEN LAW. Stat. Def., means law contained in—(a) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or (b) any judicial decision which is so applicable and is evidenced in published written sources (Bribery Act 2010 s.5).

WRITTEN-OFF MOTOR VEHICLE. Stat. Def., s.16(1) of the Vehicles (Crime) Act 2001 (c.3).

WRITTEN PUBLICATION. Stat. Def., Criminal Procedure and Investigations Act 1996 (c.25) s.59(2).

WRITTEN REPORT. "Written report" (Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 (SI 1987/2023) r.3(2)). A report by an Official Receiver providing evidence that a director is unfit for office was still valid for the purposes of this rule notwithstanding that it was written by the Official Receiver's deputy (*Re Homes Assured Corp* [1993] B.C.C. 573).

WRITTEN WARRANTY. A written warranty, under s.25 was not rendered unavailable as a defence by the addition of "without accepting any responsibility after delivery" (*Wilson v Playle*, 88 L.T. 554). Cp. WITHOUT PREJUDICE.

The entry of the brand name on the invoice covering the sale of pre-packed frozen chickens was a "written warranty" within the meaning of s.115 of the Food and Drugs Act 1955 (c.16) (*Rochdale Metropolitan BC v FMC (Meat)* [1980] 2 All E.R. 303).

A contract to give a written warranty need not be in writing (*Irving v Callow Part Dairy Co*, 87 L.T. 70).

See FALSE WARRANTY; FOOD; WARRANTY; Cp. REPRESENT.

WRONG. "Wrong", in the *Menaghten* rules (10 Cl. & F. 200), which apply to all cases of insanity, whatever might be the nature of the insanity or disease of the mind from which the person accused is suffering, does not mean "wrong" according to the opinion of one man or of a number of people on the question whether a particular act might or might not be justified morally (*R. v Windle* [1952] 2 Q.B. 826).

The defence of insanity to a charge of cruelty cannot succeed if the person accused knew that what he was doing was morally wrong, even though he did not know that it was legally wrong (*Sofaer v Sofaer* [1960] 1 W.L.R. 1173).

"Wrong in law" (Courts Act 1971 (c.23) s.10(2)). A sentence within the Crown Court's discretionary limits is not "wrong in law" for the purposes of this section

WRONGED

unless the person questioning it can show it to be harsh and oppressive or so far outside the normal sentence imposed for the offence as to enable the Divisional Court to hold that there must have been an error of law (*R. v Crown Court of St. Albans, Ex p. Cinnamond* [1981] 1 All E.R. 802).

“What makes a decision ‘wrong’ has been the subject of a number of authorities as the notes to CPR 52.11 in the White Book illustrate. It depends on the subject matter, the nature of the decision at issue and the nature of the error relied on. The fact that the appeal will normally be by way of review does not require the application of judicial review or *Wednesbury* principles. The Court of Appeal made this clear in *E.I. Du Pont De Nemours & Co v S.T. Dupont* [2003] Civ 1368, [2006] 1 WLR 2793 (especially at paragraph 94). A pure error of law would simply be wrong. A finding of primary fact would be less readily held wrong than an inference drawn from documents or an evaluation of factual material in which the court was as well placed as the auditor to make a decision. The exercise of the discretion is wrong either where it is wrong in principle or where it is outside the range of decisions reasonably open to the decision maker or has been made without consideration of the relevant factors. This involves an approach to discretion probably indistinguishable from judicial review principles. This is especially important where an appeal relates to the exercise of a discretionary judgment by an expert and specialist person or body in the course of a specific statutory function, such as local government auditors. Obviously if no discretion was exercised because the auditor wrongly thought that the item in issue was lawful, the approach by the court to the question of discretion would be very different from that where an auditor had correctly concluded that an item was unlawful but had exercised his discretion against seeking a declaration, or had exercised his discretion against seeking a declaration on the contingent basis that even if the item were unlawful no declaration should be sought.” (*R. (on the application of Moss) v KPMG LLP* [2010] EWHC 2923 (Admin).)

See TORT.

WRONGED. “It would be very undesirable to prescribe limits to what the Board could conclude was an act which ‘wronged’ serving personnel. It is clearly a word intended to be of wide scope. It is certainly broad enough to enable the Board to give a purposive interpretation to a subparagraph, rather than a black letter lawyerly one which could obscure its real aim. For that purpose it can interpret the policy, as should the court, to give effect to its intent and to avoid a policy covering unfairly cases which the policy was not intended to deal with. The Board can properly interpret regulations to mean serving personnel take a certain amount of rough with the smooth. It can make exceptions to the application of the policy to that same end. The Board’s interpretation and application of policy, in view of its role and experience should be an important guide to the court. I would say no more, without being prescriptive, than that a person was ‘wronged’ if he was treated significantly unfairly or unreasonably as a result of the interpretation or application of a policy.” (*R. (on the application of Lai) v Secretary of State for Defence* [2011] EWHC 145 (Admin).)

WRONGFUL. “Wrongful”: see per Bowen L.J., *Mogul Co v McGregor*, 23 Q.B.D. 598, cited MALICE; IMPROPER; INJURE.

“Wrongful act or default”: see DEFAULT. See further *Watson v Board of Trade*, 22 Sc. L.R. 22, and *Brown v Board of Trade*, 28 Sc. L.R. 401, both cited DEFAULT; *British Homes Assurance v Paterson* [1902] 2 Ch. 404, and *Hamlyn v Houston* [1903] 1 K.B. 81, both cited ORDINARY COURSE; *Woolworths Ltd v Crotty*, 66 C.L.R. 603.

See VOID.

WRONGFUL ACT. Within the meaning of s.10 of the Partnership Act 1890 (c.39) (firm liable for wrongful act of partner) “wrongful act” was not confined to common law torts but could include the equitable wrong of dishonest participation in a breach of trust (*Dubai Aluminium Co Ltd v Salaam* [2002] 3 W.L.R. 1913, HL).

WRONGFULLY. In a pleading in trespass, “wrongfully” does not put the title in issue (*Frankum v Falmouth*, 2 A. & E. 452).

WRONGFULLY AFFECTED. See INJURIOUSLY AFFECTED.

WRONGFULLY CLAIMING. “Wrongfully claiming” (Real Property Limitation Act 1833 (c.27) s.9); see *Williams v Pott*, L.R. 12 Eq. 149. “Under that section, a lessee for years paying rent to a person ‘wrongfully claiming to be entitled’, is supposed to be in possession; and a title can only be acquired against the true owner by a wrongful receipt of rents. The same words are not elsewhere used; but I am of opinion that what was said by the learned judge (in *Shaw v Keighron* Ir. Rep. 3 Eq. 574) is equally true of any other case in which the statute is set up as a bar to the true owner by virtue only of the receipt of rent from tenants in possession. I think that such receipt of rent, in order to exclude the true owner, must always be by a person ‘wrongfully claiming’—and not receiving, or claiming a right to receive, on behalf of the true owner. When the true owner can and does ratify an agency undertaken on his behalf, though without his antecedent authority, the case is the same as if he had himself received the rents” (per Selborne C., *Lyell v Kennedy*, 14 App. Cas. 460). See now Limitation Act 1939 (2 & 3 Geo. 6, c.21) s.9. See “Cestui que trust”, under CESTUI; REPRESENTATIVE.

WRONGFULLY QUITTING. See QUIT.

WROUGHT. A proviso in a coal mining lease, ceasing rent on the coal being worked out “so far as the same can be fairly wrought”, “relates to the possibility of obtaining coal by fair working” (per Pollock C.B.), and the question of working at a profit has no bearing (*Griffiths v Rigby*, 25 L.J. Ex. 284).

Cp. WORKABLE.

WYDRAUGHT. “A water passage, gutter, or watering place” (JACOB).

WYKE. See WIKE.

Y

YACHT. See *The Germania* [1917] A.C. 375, cited NAVIRE DE COMMERCE.

YAIR. In the old statutes against the use of yairs and cruffis in "fresh waters where the sea flows and ebbs", "yairs" included stakenets (per Eldon C., *Dalglish v Athol*, 5 Dow. 291; see on this case *Horne v Mackenzie*, 6 Cl. & F. 628, cited RIVER).

YARD. A large yard for bonding foreign timber, in which there were a deal shed and two buildings, with saw-pits; held, on the context, not to be a "yard" within a clause, in a railway Act, enabling an owner to insist on the whole being taken if any part of it was required (*Stone v Commercial Railway*, 9 Sim. 621).

"Yard" (Vagrancy Act 1824 (c.83) s.4) is not to be confined to a yard attached to a dwelling-house (*Goodhew v Morton* [1962] 1 W.L.R. 210). But it is by nature a small area, and for the purposes of this section cannot comprise a railway siding one mile long and a quarter of a mile wide (*Quatromini v Peck* [1972] 1 W.L.R. 1318).

Stat. Def., Weights and Measures Act 1963 (c.31) Sch.1 Pt 1.

See SUPERFICIAL YARD; YARDS.

YARDLAND. "*Una virgata terræ*, a yard-land, is in some countries 10, in some 20, in some 24, in some 30, etc." (Co. Litt. 5A; the "etc." here means "acres", Touch 93). "By the grant therefore of *virgatam terræ*, or a yardland, will pass that quantity of land, meadow and pasture, that is called by this name. And so by the grant of half a yard or a quarter of a yard land" (Touch. 93). See further Cowel; Jacob; Elph. 567, 631.

YARDS. The parcels in a conveyance were described by reference to coloured parts of a plan. A yard, delineated but not coloured in the plan, was held to pass under the general word "yards" (*Willis v Watney*, 51 L.J. Ch. 181). See GENERAL WORDS.

"Yards and gardens"; "yards, courts, and curtilages": see *Browne v Furtado* [1903] 1 K.B. 723, cited DWELLING-HOUSE.

YEAR. "A year is the time wherein the sun goes around his compass through the twelve signs, viz. 365 days and about six hours. But in Leap Year the statute (24 Geo. 2, c.23) enacts that the year shall consist of 366 days; so that in *R. v Wormingall* (6 M. & S. 350), upon a question of yearly hiring, Lord Ellenborough said, 'In those years which consist of 366 days, a hiring and service for a year, must be for that same number of days, in like manner as when the year was 365 days, it must have continuance during that number'".

An "agreement not to be performed within the space of one year from the making thereof" (Statute of Frauds s.4) means within 12 calendar months from that date (*Bracegirdle v Heald*, 1 B. & Ald. 722; *Snelling v Huntingfield*, 1 Cr. M. & R. 20). See further NOT TO BE; EXCEEDS; PERFORMED; NOTE.

Under the Companies Act 1862 (c.89) ss.26, 49 (Companies Act 1985 (c.6) ss.363, 366), the annual list of members, and the general meetings, which are to be sent, or held, "once at least in every year", the word "year" means the period of time from

January 1 to December 31, not a period of 12 calendar months calculated from the registration of the company (*Gibson v Barton*, L.R. 10 Q.B. 329; *Edmonds v Foster*, 33 L.T. 690).

Where a company's articles give the directors a stated sum "by way of remuneration in each year", nothing can be claimed except for a complete year; *secus*, if the phrase were "at the rate of" so much for each year (*Salton v New Beeston Co*, [1899] 1 Ch. 775); and so, if the words are so much "per annum" there must be services for a complete year (*Re Central De Kaap Co*, 69 L.J. Ch. 18). See further *Re London & Northern Bank, McConnell's Case* [1901] 1 Ch. 728; *Inman v Ackroyd* [1901] 1 K.B. 613; *Moriarty v Regent's, etc. Co* [1921] 2 K.B. 766. Cp. *Caridad Copper-Mining Co v Swallow* [1902] 2 K.B. 44, cited DETERMINE.

In a corporation charter, "year" has been held to mean a mayoralty, though less than a year (*R. v Swyer*, 10 B. & C. 486).

In a theatrical engagement, "year" means "season" (*Grant v Maddox*, 16 L.J. Ex. 227). In that case Alderson B. said: "The contract is that the plaintiff is to be paid for three years, at a salary of 5, 6, and 7 per week in those years; that means, according to the universal understanding amongst actors, that she is to be paid so much per week, during every week that the theatre is open".

Hiring of horses by the year, determinable on a quarter's notice: see *Tilling v James*, 22 T.L.R. 599.

A covenant in a lease not to assign or underlet "for a longer period than a year" is not broken by a sublease for a year commencing at a future date (*Croft v Lumley*, 6 H.L. Cas. 672); but, semble, a lease under a power must take effect at once (*Croft*, 6 H.L. Cas. 737).

"In each year" in a covenant meant in each calendar year (*IRC v Hobhouse* [1956] 1 W.L.R. 1393).

"One year's wages": see SERVANT; *Re Ravensworth* [1905] 2 Ch. 1; distinguished in *Re Sheffield*, 80 L.T. 313, where it was held that a bequest to servants of "the amount of one year's wages in addition to what may be then actually due to them for wages" was not confined to servants hired by the year, but extended to servants engaged at weekly wages.

Dead year is the year from the death of a deceased for winding-up his estate, during which time his executor or administrator cannot be sued for a legacy or a share (*Wood v Penoyre*, 13 Ves. 333; *Benson v Maude*, 6 Mad. 15).

"In that year": see *Murray v Inland Revenue Commissioners* [1918] A.C. 541.

Condition of establishing title "within one year": see *Re Hartley*, 34 Ch. D. 742.

"Space of one whole year" (Pluralities Act 1838 (c.106) s.58): see *Bartlett v Kirwood*, 23 L.J.Q.B. 9; WHOLE.

"In . . . the year of assessment" (Income and Corporation Taxes Act 1988 (c.1) s.381(1)). The words "in . . . the year of assessment" should be given their ordinary and natural meaning and referred to a fiscal year (*Gascoine v Wharton (Inspector of Taxes)* (1996) T.C. Leaflet No.3498).

"By the year": see VALUE.

"One year's stipend": see ONE.

"Current year": see CURRENT.

"End of the year": see END.

"Financial year": see FINANCIAL.

"Savings bank year": see SAVINGS.

"School year": see SCHOOL.

"Commencement of year": see MICHAELMAS.

See HALF A YEAR; QUARTER OF A YEAR; SUCCEEDING; TENANT FOR YEARS; YEAR TO YEAR; TWELVEMONTH.

YEAR AND A DAY. In computing a year and a day after an event, the day on which the event happens is counted as the first day (Co. Litt. 255A; Steph. Cr. (9th edn), 210). See hereon Cowel; Jacob, *Year*. See *R. v Dyson* [1908] 2 K.B. 454, cited SUBSTANTIAL.

YEAR CERTAIN. A tenancy for years, determinable on lives, is not for "any term or number of years certain", within s.1 (1 Geo. 4, c.87) (*Doe d. Pemberton v Roe*, 5 L.J.O.S.K.B. 289, cited TERM CERTAIN).

Letting for "one year certain, and so on from year to year": see YEAR TO YEAR.

YEAR, DAY, AND WASTE. See Cowel; Jacob, *Year*; *Termes de la Ley*, An, Jour, and wast.

YEAR TO YEAR. "A tenancy from year to year is a lease for a year certain, with growing interest during every year thereafter, springing out of the original contract and part of it" (per Parke B., in *Oxley v James*, 13 M. & W. 210, at 214). "Such a tenancy is for a year certain, terminable by either side by six months' notice to quit, expiring at the end of the year, involving, if such notice is not given, another year's tenancy terminable in the same way" (per Scrutton L.J., in *Gray v Spyer* [1922] 2 Ch. 22). See also *Northchurch Estates Ltd v Daniels* [1946] 2 All E.R. 524.

"Where parties agree for a tenancy 'from year to year', and possession is taken, such a tenancy is thereby created, and may be determined at the end of the first or any subsequent year of the tenancy by a regular notice to quit (*Doe d. Clarke v Smaridge* 7 Q.B. 957; *Doe d. Plumer v Mainby* 10 Q.B. 473). But where a tenancy is created 'for one year certain, and so on from year to year', it enures as a tenancy for two years at the least, and cannot be determined at the end of the first year (*Doe d. Chadborn v Green* 1 P. & D. 454; *Cannon Brewery v Nash* 77 L.T. 648; *R. v Chawton* 1 Q.B. 247; see further *Lutterel v Weston* Cro. Jac. 308); though it may be determined by notice to quit at the end of the second or any subsequent year of the tenancy; see hereon per Palles C.B., *R. v Cork Justices* [1906] 2 Ir. R. 355. The tenancy may be for eighteen months certain and thereafter from year to year if six months notice of termination is required: see *Addis v Burrows* [1948] 1 K.B. 444. A demise 'for a year', or 'for one year certain', does not create a tenancy from year to year, nor require any notice to quit at the end of the year (*Cobb v Stokes* 8 East, 358, 361; *Wilson v Abbott* 3 B. & C. 88; *Johnstone v Hudlestone* 4 B. & C. 937)" (Woodf. (24th edn), 269).

"Person having no greater interest than as tenant for a year, or from year to year" (Lands Clauses Consolidation Act 1845 (c.18) s.121): see *R. v Kennedy* [1893] 1 Q.B. 533.

It is the alleged interest the value of which has, under s.121 of the Lands Clauses Consolidation Act 1845 (c.18), to be assessed by the justices, and they have no right to try the title thereto; but it is a condition precedent to their making an assessment that the claimant has been "required to give up possession . . . before the expiration of his term or interest" (*Great Northern & City Railway v Tillet* [1902] 1 K.B. 874).

"Year to year" (Agricultural Holdings (England) Act 1883 (c.61) (see s.61), and Market Gardeners Compensation Act 1895 (c.27) (see s.1)). Within that definition a yearly letting was "from year to year" notwithstanding that it might be determined by a short notice on any day of the year (*King v Eversfield* [1897] 2 Q.B. 475). But see

now Agricultural Holdings Act 1948 (c.63), s.94. See further *Re Kedwell and Flint* [1911] 1 K.B. 797, cited MARKET GARDEN.

The expression “from year to year”, relating to a tenancy of land, imports certain incidents, e.g. a right to determine the tenancy by six months’ notice, the same incidents are not necessarily imported into a commercial agreement relating to the provision of advice and the performance of services (*Re Barker Sportcraft’s Agreements*, 91 S.J. 409).

“Less than a tenancy from year to year”: see LESS.

YEARLING. “If a breeder of horses should bequeath ‘his yearlings’, and survive into the next year, the yearlings of the latter year, and not those of the former (now two-year-olds), would probably be held to pass” (1 Jarm. 331, n. (g)).

YEARLY. “‘Yearly’ is only a word of calculation’ (per Campbell C.J., *Doe d. King v Grafton*, 18 Q.B. 501).

Where the agreement is to pay so much a year, whether it be for rent or services, and nothing is said as to shorter payments, then nothing becomes due till the end of each year of the agreement; and, if the agreement be in writing, evidence cannot be given of an oral agreement to pay the payments quarterly or in some other mode (*Giraud v Richmond*, 15 L.J.C.P. 180, and cases there cited by Byles, in argument; but see as to the latter part of this proposition, *Ridgeway v Hungerford Market Co*, 3 A. & E. 171). Cp. QUARTERLY. See further *Salton v New Beeston Co* [1899] 1 Ch. 775, cited YEAR.

“If a man has a power to make leases, reserving the ancient yearly rent ‘annually’, yet if it were reserved upon a day before the year was up (as if the year ended at Christmas and it was reserved at Michaelmas) it would be well, pursuant to the power” (per Powell J., *R. v Weston*, Raym. Ld., 1198; adopted and applied in House of Lords, *Rutland v Doe*, 12 M. & W. 397, 400, in which last case Lord Campbell doubted whether a reservation of rent at the beginning of each year would be good, because that would tend to a lesser rent being paid).

“The usual ‘yearly’ rent means the yearly rent of so many half-yearly or quarterly payments in the year” (per Abbott C.J., *Doe d. Shrewsbury v Wilson*, 5 B. & Ald. 382). And the better opinion seems to be that in executing a power of leasing which requires the reservation of “yearly” rents, the days of payment, how many and what, are immaterial so long as the rent is a yearly one (*Doe d. Douglas v Lock*, 4 L.J.K.B. 117, 119; but in that case after an elaborate review of the somewhat conflicting authorities hereon, the court refrained from deciding this point and disposed of the case on other grounds). See hereon Sug. Pow. 793–795.

In *Doe d. Shrewsbury v Wilson* (above), the words “made payable yearly” were considered the same as if the words had been “payable every year”. “In common parlance the word ‘yearly’ in such powers means not a payment of rent once a year, but that the same is to be paid ‘in or during’ every year. In one sense a rent reserved half-yearly is payable yearly, because it is payable during the year” (Sug. Pow. 795).

See ANNUALLY; HALF-YEARLY; PER ANNUM; QUARTERLY.

YEARLY INTEREST. Interest paid on a loan which was made as an investment on a mortgage of property was “yearly interest of money” within the meaning of s.169 of the Income Tax Act 1952 (c.10) (*Corinthian Securities v Cato* [1970] 1 Q.B. 377).

Accrued sums payable by a subsidiary company to its parent company on a commercial loan were held to be “yearly interest” within the meaning of s.251(2) of the Income and Corporation Taxes Act 1970 (c.10) (*Minsham Properties v Price* [1990] S.T.C. 718).

YEARLY PRODUCE. See PRODUCE; FREE ANNUAL.

YEARLY RENT. See CLEAR; FREE YEARLY.

YEARLY VALUE. Stat. Def., Representation of the People Act 1949 (c.68) s.5(7)(d).

See ANNUAL VALUE; CLEAR; FREE LAND; VALUE; FREE YEARLY.

YEARS. When successive: see TERM.

YELVERTON'S ACT. For extending to Ireland much of the statute law of England (21 & 22 Geo. 3, c.48), amended by s.1 of the Crown Lands (Ireland) Act 1826 (c.68). See further POYNING'S ACTS.

YEOMAN. "Camden placeth yeomen next in order to gentlemen" (Jacob). If that be so, and it seems a gentleman is "one who has nothing to do", then Camden's definition of yeoman is a little vague. Still the word has for centuries been used as an ADDITION to a person's name (*Termes de la Ley*, Additions). Blackstone says, "a yeoman is he that hath free land of 40s. by the year; who was antiently thereby qualified to serve on juries, vote for knights of the shire, and do any other act where the law requires one that is *probus et legalis homo*" (1 Bl. Com. 406, 407, citing 2 Inst. 668).

YEW TREES. See NUISANCE.

YIELD. "Remove from, or yield up, the possession" of an inn (*Alehouse Act* 1828 (c.61) s.14): see *R. v Wiltshire Justices*, 57 J.P. 454.

"Is yielding or will yield" (Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (c.17) s.9(1)): see *Roppel v Bennett* [1949] 1 K.B. 115; *Roirdan v Minchin* [1949] 1 K.B. 137.

"Yield of natural fibre" in a contract meant the total yield of fibre, whether tow or line (*Forres (Lord) v Scottish Flax Co Ltd* [1943] 2 All E.R. 366).

YIELDING AND PAYING. These words, with which the reddendum clause in a lease is usually commenced, created by their own vigour a covenant by the lessee to pay the rent reserved (*Hellier v Casbard*, 1 Sid. 266; *Porter v Swetnam*, Style, 406; *Bower v Hodges*, 22 L.J.C.P. 194; see further Elph. 419, 420). But they do not create a CONDITION precedent (see PAYING).

YOGHURT. "5. At its simplest, yoghurt is a form of fermented milk, usually (now) from cows. It may be sold on its own, usually called 'plain', mixed or layered with fruit, honey, nuts or other products, or in twin-pots where the yoghurt and the flavouring are kept separate. Thick and creamy yoghurt is derived from ordinary yoghurt by two main processes. The first, generally called straining, involves the separation and removal of the watery whey. The second involves the use of thickening agents, such as concentrated or dried milk products. Traditionally, straining was achieved by the use of cloth bags through which the fluid but not the solid elements in the fermented milk were able to pass. More modern industrial processes include ultra-filtration and separation by centrifuge. They are perhaps less appropriately described as straining than is the cloth bag method. Nonetheless, like Chobani's expert Mr Michael Hickey, I shall refer to all yoghurt made thick and creamy by the extraction of fluid as strained." (*Fage UK Ltd v Chobani UK Ltd* [2013] EWHC 630 (Ch).)

YOU. "You", as a description of a lessee in an agreement to grant a lease, is good; it is as good as proprietor, for a vendor, in a vendor and purchaser contract (per Farwell J., *Carr v Lynch* [1900] 1 Ch. 613).

"You", in a question in a proposal form for an insurance policy, refers only to "you the present proposer", and not to "you or either of you": see *Becker v Marshall*, 11 Ll. L. Rep. 114.

"You shall take reasonable precautions to prevent accidents and... not use improper or inadequate gear", in a contract between shipowners and stevedores: see *T. F. Maltby v Pelton Steamship Co* [1951] 2 All E.R. 954, cited USE.

"You", in a writ to several defendants, is construed distributively (*Engleheart v Eyre*, 2 Dowl. 145).

YOUNG PERSON. Stat. Def., Shops Act 1950 (c.28) s.74; Mines and Quarries Act 1954 (c.70) s.182(1); Factories Act 1961 (c.34) s.176; Offices, Shops and Railway Premises Act 1963 (c.41) s.18(2); Children and Young Persons Act 1969 (c.54) s.70; Bail Act 1976 (c.63) s.2(2).

See BOY; CHILD; GIRL; INFANT; WOMAN; YOUTH.

YOUNG SALMON. "Young of salmon" (Salmon and Freshwater Fisheries Acts) includes "all young of the salmon species, whether known by the names of fry, samlet, smolt, smelt, skirling or skarling, par, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, brondling, or by any other name local or otherwise" (Salmon Fishery Act 1861 (24 & 25 Vict., c.109) s.4).

See FRY; SALMON.

YOUNGER; YOUNGEST. Prima facie "younger" or "youngest" has reference to the order of birth (2 Jarm. (4th edn) 213; *Bootle v Scarisbrick*, 1 H.L. Cas. 167).

An "only" child would take under a bequest to a person's "youngest child" (*Emery v England*, 3 Ves. 232): see 3 Jarm. (8th edn), 1727.

"Younger branches" of a family: see *Doe d. Smith v Fleming*, 5 L.J. Ex. 74; 3 Jarm. (8th edn), 1577.

"Younger children" are those which were such at the death of the intestate or heir in possession (per Hatherley C., *Catton v Mackenzie*, L.R. 2 H.L. Sc. & D. App. 203). See further *Mason v Westoby*, 42 Ch. D. 590; *Re Prytherch*, 42 Ch. D. 591.

"Where the estate is settled on the eldest son, and, subject to that, a power is given of appointing portions to the younger children, a younger child who becomes the eldest before receiving his portion, is not within the power (*Chadwick v Doleman* 2 Vern. 528; *Teynham v Webb* 2 Ves. sen. 198; see also *Lincoln v Pelham*, *Bowles v Bowles*, *Leake v Leake* 10 Ves. 166, 177, 477; *Savage v Carroll* 1 Ball & Beatty, 265; *Matthews v Paul* 3 Swanst. 328; *Peacock v Pares* 2 Keen, 689); but he must become an eldest or only son in the sense of the settlement, although not fully expressed, to exclude him from a portion; that is, he must take the estate provided by the settlement for the eldest or only son (*Spencer v Spencer* 8 Sim. 87), and this even where the settlement expressly provides that the portion of a younger son becoming the eldest son in the lifetime of his father shall accrue to the survivors; therefore, if the father and his eldest son bar the estate tail and remainders, and dispose otherwise of the estate, the second son, although he may become, by his brother's death without issue in his father's lifetime, the eldest son entitled according to the settlement will still be entitled to his portion as a younger son (*Macoubrey v Jones* 2 K. & J. 684; see further *Re Fitzgerald* [1891] 3 Ch. 394, inf; *Re Wrottesley* [1911] 1 Ch. 708). This is the exception; but as to the general rule, where a power was given to appoint a sum amongst younger children, provided that the eldest son, or the son possessing the estate should have no share of it, and an appointment was made, *nominatim*, to Anthony, the second son, and the other younger children, and, after the appointment,

Anthony became the eldest son by the death of his elder brother, and the estate descended upon him, Lord Thurlow held that Anthony could not take any part of the fund, although the appointment was not revoked (*Broadmead v Wood* 1 Bro C.C. 77)" (SUG. POW. 678, 679). See further SUG. POW. 620, 693; Elph. ch. 24; ELDEST.

On the other hand, the representatives of the eldest son ordinarily become entitled to a younger son's portion if he dies before the time fixed by the settlement for the distribution of the portions fund; but they are not so entitled if, as remainderman in tail, the eldest son has joined in a disentailing deed, and in raising money by mortgage of the estate out of which money he has received a substantial sum for himself, for then, in effect, he would be taking a double portion (*Collingwood v Stanhope*, L.R. 4 H.L. 43; *Re Fitzgerald* [1891] 3 Ch. 394).

As a general rule and where there is no special direction, the class of younger children "cannot be ascertained till the period of distribution" (per Romilly M.R., *Re Bailey*, L.R. 9 Eq. 491).

See ENTITLED IN POSSESSION.

YOUR. As to effect of contract for "your" wool, or other specified commodity, see *Macdonald v Longbottom*, 28 L.J.Q.B. 293; 29 L.J.Q.B. 256.

YOUR CLIENT. See CLIENT.